Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**Yes**

Specialized Work Experience

Recommenders

Hines, James
jrhines@umich.edu
734-936-5669
Reimann, Mathias
purzel@umich.edu
734-763-6331
Ferrera, Vinita
vinita.ferrera@wilmerhale.com

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Sarah Siegel

50 Causeway Street #3102, Boston, MA 02114
603-277-0855 • sarah.i.siegel@gmail.com

March 26, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a first-year Litigation Associate at WilmerHale, having previously earned my law degree at the University of Michigan Law School and my undergraduate degrees in History and Molecular, Cellular, and Developmental Biology from Yale University. I am writing to apply for a clerkship in your chambers for the 2024-2025 term.

After serving as a Summer Associate at WilmerHale in 2021, I joined the Boston office full-time in August 2022. I am focused on honing my litigation skills during the next two years with mentoring by a terrific team of partners and senior associates. I also developed my legal research and writing skills as an intern in the Criminal Division of the United States Attorney's Office for the Western District of Michigan in the summer of 2020. Additionally, at Michigan Law, I was a Senior Editor of the *Michigan Law Review*, where I strengthened my writing, cite-checking, and editing skills.

In addition to my aptitude and enthusiasm for the law, I have a strong work ethic, a collaborative and positive attitude, a friendly nature, and a good sense of humor. I am eager to apply my skills to a clerkship, and I would be honored to have the opportunity to clerk for you in Norfolk.

I have attached my resume, my writing sample, and my law school transcript for your consideration. Letters of recommendation from the following individuals are also attached:

- James R. Hines Jr. (Michigan Law Professor): jrhines@umich.edu, 734-936-5669
- Mathias W. Reimann (Michigan Law Professor): purzel@umich.edu, 734-763-6331
- Vinita Ferrera (WilmerHale Partner): vinita.ferrera@wilmerhale.com, 617-526-6208

Additionally, the following individuals have offered to serve as references:

- Albert Choi (Michigan Law Professor): alchoi@umich.edu, 434-825-3430
- Jeannette P. Leopold (WilmerHale Senior Associate): jeannette.leopold@wilmerhale.com, 617-526-6109
- Justin M. Presant (Assistant US Attorney): Justin.Presant@usdoj.gov, 616-808-2184 (work) and 616-901-7691 (work cell)
- Stephanie Waite (Former Supervisor at the Yale Office of Career Strategy): stephaniejeanlauwwaite@gmail.com, 850-459-3388 (cell)

Thank you for your time and consideration.

Respectfully,
Sarah Siegel

Sarah Siegel

50 Causeway Street #3102, Boston, MA 02114
603-277-0855 • sarah.i.siegel@gmail.com

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL, Ann Arbor, MI
J.D., May 2022
GPA 3.68
Journal: *Michigan Law Review*, Senior Editor.
Honors: Dean's Scholarship; Certificate of Pro Bono Service; Spirit of *Michigan Law Review* Award.
Activities: Wolverine Street Law, *Co-President*; Women Law Students Association, *Treasurer*; MLaw Eviction Defense Team, *Volunteer*; Campus Philharmonia Orchestra, *Trombonist*.

YALE UNIVERSITY, New Haven, CT
B.A. in History, *with honors;* and **B.A. in Molecular, Cellular, and Developmental Biology**, May 2019
GPA 3.58
Honors: Film Department Citation; Math Department Citations; Yale Hunger & Homelessness Action Project Unsung Hero Award; Y Work Award.
Fellowships: Yale Women in Government Fellowship; Yale Inst. for Social & Policy Studies Director's Fellowship; Michael N. Levy '85 Fund for Political Internships; Trumbull College Mellon Research Grant.
Activities: Yale Volunteer Income Tax Assistance, *Co-President and Advanced Preparer*; Trumbull College, *Office Aide*; Yale Harvest pre-orientation Leader; trombonist in student productions.
Theses: "'Women Are Very Essential Sometimes:' How the United States Navy Recruited Women for the Duration of World War II" (History Senior Thesis); "A Review of Landmark Research in Bacterial Chemotaxis" (Molecular, Cellular, and Developmental Biology Senior Thesis).

EXPERIENCE

WILMERHALE, Boston, MA
Litigation Associate, August 2022 – present
Summer Associate, May – July 2021

- Practice with firm's intellectual property litigation group, assisting with all stages of complex lawsuits.
- Maintain an active pro bono practice, focusing on reproductive rights and immigration.
- As a Summer Associate, researched and drafted memos on issues relating to trademarks, federal preemption, tax, jurisdiction, and contracts. Also compiled and wrote a twice-weekly newsletter updating nearly 200 firm members on recent developments in the anti-discrimination field.

UNITED STATES ATTORNEY'S OFFICE, WESTERN DISTRICT OF MICHIGAN, Grand Rapids, MI
Legal Intern, June – August 2020

- Drafted briefs for the district court and court of appeals on motion to suppress and probation modification issues.
- Researched cases on evidentiary, trial, and sentencing matters and synthesized findings for use by attorneys.
- Analyzed legislative history of statutes to help with a sentencing research project.

FRIENDS OF GINA RAIMONDO, Providence, RI
Intern, June – August 2018

- Communicated with constituents to advocate for the Governor's policies on this successful campaign.
- Utilized campaign software to identify key constituents and create targeted directories for canvassing.
- Selected for reelection campaign staff after policy internship in the Governor's Office in the Summer of 2016.

ADDITIONAL

Citizenship: United States of America, Republic of Ireland
Languages: Spanish (proficient)
Interests: Listening to classical music, playing trombone, and hiking

UNIVERSITY OF MICHIGAN
Transcripts, Certification and Diploma Department

LSA Building, Suite 5000
500 S. State Street
Ann Arbor, MI 48109-1382
Phone: 734-763-9066 Fax: 734-764-5556
ro.umich.edu

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Transcript of: Sarah Iris Siegel

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Siegel,Sarah Iris
Student#: 71955952

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2019	**(September 03, 2019 To December 20, 2019)**							
LAW	510	003	Civil Procedure	Nicholas Bagley	4.00	4.00	4.00	B
LAW	530	004	Criminal Law	David Uhlmann	4.00	4.00	4.00	A-
LAW	580	004	Torts	Margo Schlanger	4.00	4.00	4.00	B+
LAW	593	016	Legal Practice Skills I	Mark Osbeck he-him-his	2.00		2.00	S
LAW	598	016	Legal Pract:Writing & Analysis	Mark Osbeck he-him-his	1.00		1.00	S
Term Total				**GPA: 3.333**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.333**		**12.00**	**15.00**	
Winter 2020	**(January 15, 2020 To May 07, 2020)**							
During this term, a global pandemic required significant changes to course delivery. All courses used mandatory Pass/Fail grading. Consequently, honors were not awarded for 1L Legal Practice.								
LAW	520	001	Contracts	Albert Choi	4.00		4.00	PS
LAW	540	005	Introduction to Constitutional Law	Julian Davis Mortenson	4.00		4.00	PS
LAW	594	016	Legal Practice Skills II	Mark Osbeck he-him-his	2.00		2.00	PS
LAW	622	001	Editing and Advocacy Law and Letters	Patrick Barry	1.00		1.00	PS
LAW	792	001	Sports Law	Timothy Pinto	3.00		3.00	PS
Term Total					**14.00**		**14.00**	
Cumulative Total				**GPA: 3.333**		**12.00**	**29.00**	

Continued next page >

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Siegel,Sarah Iris
Student#: 71955952

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2020		**(August 31, 2020 To December 14, 2020)**						
LAW	641	001	Crim Just: Invest&Police Prac	Eve Primus	4.00	4.00	4.00	B+
LAW	686	001	Federal Indian Law	Matthew Fletcher	3.00		3.00	P
LAW	747	001	Taxation of Individual Income	James Hines Jr	4.00	4.00	4.00	A
LAW	900	411	Research	Roseanna Sommers	3.00	3.00	3.00	A
Term Total				**GPA: 3.745**	**14.00**	**11.00**	**14.00**	
Cumulative Total				**GPA: 3.530**		**23.00**	**43.00**	
Winter 2021		**(January 19, 2021 To May 06, 2021)**						
LAW	606	801	Transnational Law	Mathias Reimann	3.00	3.00	3.00	A
LAW	643	001	Crim Procedure: Bail to Post Conviction Review	Barbara Mcquade	3.00	3.00	3.00	B+
LAW	657	001	Enterprise Organization	Albert Choi	4.00	4.00	4.00	A-
LAW	751	001	Accounting for Lawyers	James Desimpelare	3.00	3.00	3.00	B+
Term Total				**GPA: 3.584**	**13.00**	**13.00**	**13.00**	
Cumulative Total				**GPA: 3.550**		**36.00**	**56.00**	
Fall 2021		**(August 30, 2021 To December 17, 2021)**						
LAW	469	001	Reproductive Rights & Justice	Leah Litman	2.00	2.00	2.00	A
LAW	687	001	Immigration and Nationality	David Thronson	3.00	3.00	3.00	A-
LAW	693	001	Jurisdiction and Choice Of Law	Mathias Reimann	4.00	4.00	4.00	A-
LAW	719	001	Good with Words Self-Advocacy and Institutional Change	Patrick Barry	1.00		1.00	S
LAW	731	001	Legal Ethics and Professional Responsibility	Bob Hirshon	2.00	2.00	2.00	A-
LAW	764	001	Women's Human Rights	Karima Bennoune	3.00	3.00	3.00	A+
Term Total				**GPA: 3.871**	**15.00**	**14.00**	**15.00**	
Cumulative Total				**GPA: 3.640**		**50.00**	**71.00**	

Continued next page >

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Siegel,Sarah Iris
Student#: 71955952

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Winter 2022	**(January 12, 2022 To May 05, 2022)**							
LAW	577	001	Intellectual Property Survey	Nicholson Price	4.00	4.00	4.00	A-
LAW	669	001	Evidence	Sherman Clark	3.00	3.00	3.00	A-
LAW	755	001	Trusts and Estates I	James Hines Jr	3.00	3.00	3.00	A
LAW	878	001	State Supreme Court Practice	Bridget McCormack	2.00	2.00	2.00	A
SPANISH	277	020	Sp Grammar & Comp	Isabel Larrotiz	3.00		3.00	A+
Term Total				**GPA: 3.825**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.675**		**62.00**	**86.00**	

End of Transcript
Total Number of Pages 3

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University of Michigan Law School
Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

F Fail.

H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.

I Incomplete.

P Pass when student has elected the limited grade option.*

PS Pass.

S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)

T Mandatory pass when student is transferring to U of M Law School.

W Withdrew from course.

Y Final grade has not been assigned.

* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

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Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

University of Michigan Law School
625 S. State Street
Ann Arbor, MI 48109

James R. Hines Jr.
L. Hart Wright Collegiate Professor of Law
Richard A. Musgrave Collegiate Professor of Economics,
College of Literature, Science & the Arts
jrhines@umich.edu

March 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write concerning Sarah Siegel, an outstanding 2022 Michigan Law graduate who is now an associate at WilmerHale and is looking for a clerkship.

Sarah will make a fantastic clerk. She is brilliant, careful, and extremely thorough. She is a very hard worker with a delightful personality.

Sarah was my student in two classes, the first time in Law 747 ("Taxation of Individual Income") in the fall of her 2L year. Due to the pandemic the class was entirely online, but despite the remoteness of the learning environment she was fully engaged with the class material right from the start, and never let up. Sarah asked great questions in and out of class, identifying logical inconsistencies in the Internal Revenue Code and regulations, relentlessly (and in many cases, quixotically) seeking to resolve them in satisfying ways. And she had extremely well informed and thoughtful answers whenever cold-called.

Sarah wrote a brilliant final exam. Under Michigan's rules for the pandemic semesters, I am not permitted to compare Sarah's performance to the performances of her classmates that term – but can offer that I have taught this class many times in the past, and Sarah's final exam would have placed her first in the class most of those years.

Subsequently I had Sarah in my Trusts and Estates I class, this time in person, and this time in her last semester of law school. She picked up exactly where she was with the tax class – extremely well prepared and just very impressive. When I needed to call on someone who would be sure to be paying attention and who would know the right answer, I called on Sarah – and she never failed to deliver. Her final exam was (predictably) a tour de force, most notably exhibiting a keen understanding of complex legal issues involving trusts. It is noteworthy that not only was Sarah at the top of this class, but that she turned in a brilliant performance despite this being her last semester in law school, when frankly many students are starting to pack it in – but not Sarah, because that is not how she does things.

The experience of having Sarah in class is that she is as much a colleague as she is a student. She is bright and alert and has a winning personality that combines warm personal interaction with dead seriousness when it is time to talk business. I urge you to take a very close look at Sarah Siegel, as she was an outstanding law student who will make the judge who hires her extremely happy.

Most Sincerely,

James R. Hines Jr.

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL
HUTCHINS HALL
ANN ARBOR, MICHIGAN 48109-1215

Prof. Dr. Mathias Reimann, LL.M.
Hessel E. Yntema Professor of Law

March 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Ms. Sarah Siegel is applying for a clerkship, and I am glad to write in her support. Ms. Siegel was my student twice, and I came to appreciate her as both a highly capable young lawyer and a refreshingly upbeat person. She is smart in an unobtrusive fashion, inquisitive, organized, and disciplined, and she has the precious ability never to lose sight of the forest before the trees.

Let me first say a few words about her performance in my classes. Ms. Siegel took my course on Jurisdiction and Choice of Law (fall of 2021) which has the well-deserved reputation of being one of the toughest challenges in our curriculum. It is a furiously fast-paced, wide-ranging tour de force through both personal and federal jurisdiction (in far greater depth than in any first-year civil procedure course); the law applicable in (transboundary) state court litigation as well in federal courts (including the whole panoply of Erie issues, preemption, federal common law, and substance v. procedure problems); and judgments recognition in both state and federal courts; to all this, often highly complex, material, an international perspective is added. The course thus provides the students with much of the toolkit a judicial clerk must have at his or her fingertips. The final exam is a combination of an objective (in-class) part testing actual knowledge and a 24-hour take-home testing the ability to analyze a complicated case hypothetical, and it leaves no place to hide. It is fair to say that a student who does well in this course shows great promise as a lawyer. It requires strong analytical skills, careful organization of preparation, and constantly keeping abreast with the progress of the class. Ms. Siegel's grade put her in the top 20 % of a very competitive group which consists of many students aiming at federal clerkships.

In a similar vein, scoring a straight A in my Transnational Law course (winter term 2021) is no small feat. The course introduces students to the legal orders that lie beyond the domestic orbit, and the material is as complex as it is novel – students have to deal with treaties and UN Resolutions, decisions by international and foreign tribunals, so-called "soft law" and concepts like sovereign immunity and comity. In this sea of unfamiliar sources, it is difficult to keep one's head above water and even more difficult to make sense of it all. Ms. Siegel's performance demonstrated a strong ability to conquer new territory, get oriented quickly, and learn and apply forms of legal reasoning outside of the standard curricular fare.

Ms. Siegel's overall GPA is nothing to be ashamed of but it does not really reflect her capability. She was a member of the class which got thrown for a loop by the Covid pandemic: remote instruction (via Zoom); mandatory pass-fail grades; no real classroom experience for two or three semesters, etc. Once the dust settled, Ms. Siegel hit her stride and scored top grades in all of her classes. Thus, her last term was her best with all As (including A- and A+). Note that these were hard-core law courses graded on a curve. Note also that she excelled in the course on State Supreme Court Practice which was taught by my former colleague and now Chief Justice of the Michigan Supreme Court, Bridget McCormack – a woman who, I can assure you, has no tolerance for mediocre lawyering and who does not award an A without very good reason.

Then there are Ms. Siegel's numerous extracurricular activities (both at Yale and at Michigan), some showing particular social engagement, some of a more academic nature like her work on the Michigan Law Review. This is a woman of almost boundless energy, curiosity, and enthusiasm.

Finally, her incredibly upbeat personality deserves mention. Once I cold-called on her, whereupon she calmly informed me that she did not have her notes with her (they had fallen out of her backpack in her locker) – and then proceeded to answer my questions (correctly) from memory and to stand her ground under fire completely unfazed and with a smile. Ms. Siegel combines self-confidence with humility and seriousness of purpose with a delightful sense of humor.

It is no surprise that a law firm like Wilmer Hale looked her over for a summer after her second year and then hired her after graduation. Yet, while she is currently practicing law at very high level, her ultimate career goal is in public service.

For this reason also, she is eager to develop more and broader professional skills, especially through high-level mentoring. Already in law school, she was always eager to learn beyond the classroom. I remember that she was among the students who often stayed after class, who sought both my input with regard to the material and my advice with regard to her career options. Thus, a federal clerkship will be an invaluable experience for her.

Mathias Reimann - purzel@umich.edu - 734-763-6331

In short, there is every reason to believe that she will be wonderful person to work with, both on the professional and the personal level. Of course, competition for federal clerkships is stiff, but Ms. Siegel should be considered among the top candidates.

Best regards,

Mathias Reimann

Hessel E. Yntema Professor of Law

Mathias Reimann - purzel@umich.edu - 734-763-6331

March 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Ms. Sarah Siegel has asked me whether I would recommend her for a position as a law clerk in your Chambers. I am happy to do so without reservation.

Sarah worked as a Summer Associate in WilmerHale's Boston office from May through July 2021. She rejoined the firm in August 2022 as an Associate.

Sarah has received uniformly strong reviews during her time at WilmerHale. Her reviewers praise her research abilities, writing and oral communication skills, and her organizational abilities. One colleague wrote that she "tackled a difficult legal research question involving a Russian doll of thorny issues," that she "distilled the issues well," and "presented her findings in a clear and confident manner." Another colleague (himself a former federal court of appeals clerk) noted that Sarah is proactive about checking in to make sure that she is on track both in terms of the substance as well as the form of the requested work product, and he added that she shows good judgment in prioritizing tasks and adjusting as circumstances evolve. Other colleagues have confirmed that Sarah is an effective communicator. She is highly diligent, jumps at opportunities to make meaningful contributions to the matters on which she is working, and is enthusiastic about taking on more responsibility on her cases. She is an excellent team player, a natural leader, and very collegial and enjoyable to work with.

My direct experience with Sarah confirms my colleagues' assessments. I have supervised Sarah's work in connection with a pro bono asylum matter. Sarah has largely driven the matter, including interacting with the pro bono client, working with co-counsel to coordinate strategy, researching and developing the legal arguments, and conducting interviews of both the client and third parties to obtain the necessary factual support for the declarations in support of the asylum application. Sarah has navigated the client communications effectively, in spite of a language barrier. Her written work product has likewise been clear, concise, and persuasive.

Based on what I have seen personally and on my colleagues' evaluations, I believe that Sarah has the work ethic, self-direction, judgment, and attention to detail that will make her an excellent young lawyer. While I would be sorry to see Sarah depart
WilmerHale, I recommend her enthusiastically for a position in your Chambers.

Please do not hesitate to contact me if I can provide any further information in this regard.

Yours sincerely,

Vinita Ferrera

Vinita Ferrera - vinita.ferrera@wilmerhale.com

Sarah Siegel

50 Causeway Street #3102, Boston, MA 02114
603-277-0855 • sarah.i.siegel@gmail.com

This writing sample is taken from a partial concurrence and partial dissent that I wrote in the spring of 2022 as part of my State Supreme Court Practice class at Michigan Law with (now former) Chief Justice Bridget McCormack of the Michigan Supreme Court. Each week, we focused on a different case argued or scheduled for argument before the Michigan Supreme Court that term. This writing sample is entirely my own work.

S T A T E O F M I C H I G A N

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v No. 162221

HAMIN LORENZO DIXON,

Defendant-Appellant.

SIEGEL, J. (*concurring in part and dissenting in part*).

Today, this Court answers two questions: (1) whether attempted violation of MCL 800.283a necessarily requires a score of 25 points for Offense Variable (OV) 19; and if not, (2) whether there is sufficient evidence to score OV 19 at 25 points on this record.

On the first question, I concur with the majority's conclusion that attempted violation of MCL 800.283a does not necessarily require a score of 25 points for OV 19, and that only offense and post-offense conduct that creates a significant likelihood of harm to the security of the penal institution necessitates a score of 25 points for OV 19. I write separately regarding the first question because I disagree with the majority's decision to interpret MCL 777.49 (which provides for the scoring of OV 19) as a whole, rather than to focus its analysis only on MCL 800.283a. I would not extend our holding to MCL 777.49 in its entirety.

On the second question, I respectfully dissent from the majority's conclusion that there could be sufficient evidence to score OV 19 at 25 points on this record, and I detail the reasons why I believe that there is insufficient evidence to score OV 19 at 25 points on this record. Thus,

I disagree with the majority's decision to remand to the trial court with the potential for the trial court to score OV 19 at 25 points on this record. I would remand to the trial court for resentencing with a score of 0 points for OV 19 because I believe that there is categorically insufficient evidence to score OV 19 at 25 points on this record.[1]

I. WHETHER ATTEMPTED VIOLATION OF MCL 800.283a NECESSARILY REQUIRES A SCORE OF 25 POINTS FOR OV 19

Today, this Court first has been asked to determine whether attempted violation of MCL 800.283a necessarily requires a score of 25 points for OV 19.

MCL 800.283a reads:

> (1) "A person shall not sell, give, or furnish, or aid in the selling, giving, or furnishing of, a cellular telephone or other wireless communication device to a prisoner in a correctional facility, or dispose of a cellular telephone or other wireless communication device in or on the grounds of a correctional facility.
> (2) A prisoner shall not possess or use a cellular telephone or other wireless communication device in a correctional facility or on the grounds of a correctional facility except as authorized by the department of corrections.
> (3) A cellular telephone or other wireless communication device sold, given, furnished, possessed, or used in violation of this section is subject to confiscation and disposal under this section as contraband. If a cellular telephone or other wireless communication device is confiscated under this section, and the cellular telephone or other wireless device is serviceable but no longer needed for purposes of a criminal prosecution under this section, the cellular telephone or other wireless device shall be donated to a nonprofit organization that provides cellular telephones and other wireless communication devices to military personnel, or to any other charity approved by the warden of the facility where the device was confiscated."

MCL 800.283a.

Thus, MCL 800.283a is solely about cellphones in the correctional facility context. Therefore, I think that this Court's analysis regarding OV 19 should stop at cellphones because the

[1] I do not believe that MCL 777.49(b) or (c) apply; thus, I believe that OV 19 should be scored at 0 points under MCL 777.49(d).

question before us only asks about MCL 800.283a as regards MCL 777.49, not about MCL 777.49 (which provides for the scoring of OV 19) as a whole. The question of how to score OV 19 under MCL 777.49 as relates to other offenses need not—and should not—be answered by this Court today; this question should remain open until raised by the appropriate case(s).

Therefore, I disagree with the majority's decision to interpret MCL 777.49 more broadly than we are asked to do. I would constrain our holding to the question presented: whether attempted violation of MCL 800.283a necessarily requires a score of 25 points for OV 19. I concur with the majority that it does not, and that only offense and post-offense conduct that creates a significant likelihood of harm to the security of the penal institution necessitates a score of 25 points for OV 19.

II. WHETHER THERE IS SUFFICIENT EVIDENCE TO SCORE OV 19 AT 25 POINTS ON THIS RECORD

Having found that attempted violation of MCL 800.283a does not necessarily require a score of 25 points for OV 19, this Court next has been asked to determine whether there is sufficient evidence to score OV 19 at 25 points on this record. The majority concludes that there could be sufficient evidence to score OV 19 at 25 points on this record and remands to the trial court with the potential for the trial court to score OV 19 at 25 points on this record. I respectfully dissent because I believe that there is insufficient evidence to score OV 19 at 25 points on this record. Therefore, I would remand to the trial court for resentencing with a score of 0 points for OV 19.

As the majority notes, MCL 777.49(a) instructs courts to score OV 19 at 25 points when "[t]he offender by his or her conduct threatened the security of a penal institution or court." MCL

777.49(a). As the majority points out, a score of 25 points "is among the highest provided for by any variable in the Michigan sentencing guidelines." Majority Opinion at 8. I agree with the majority's holding that MCL 777.49(a) requires conduct to "creat[e] a significant likelihood of harm to the security of a penal institution or court"—in the context of (attempted) possession of a cellphone. *Id.* at 9.

This Court reviews the trial court's factual determinations at sentencing for clear error. *People v Babcock*, 469 Mich 247, 264 (2003). Seeing no clear error, I accept the trial court's factual findings as not clearly erroneous. I do not believe that there is sufficient evidence to score OV 19 at 25 points on this record under the majority's new standard. On May 21, 2016, Defendant-Appellant was found alone in a prison bathroom "with a cell phone." JA12; JA46. A cellphone charger was then found in his prison cell. *Id.* Defendant-Appellant was charged with one count of possession and one count of attempted possession of a cellphone by a prison inmate, and he ultimately pled guilty to the attempted possession charge in exchange for dismissal of the possession charge. JA10, JA 31–32. The Department of Corrections's presentence investigation report did not develop any other facts regarding Defendant-Appellant's acquisition of the cellphone or use thereof. JA 15–29. At the sentencing hearing, defense counsel indicated that Defendant-Appellant's cellmate (who was serving a life sentence) had signed an affidavit a year and a half later, indicating that the cellphone belonged to him. JA46. Additionally, defense counsel indicated that the cellphone was only found close to Defendant-Appellant, not physically on him. *Id.*

In this case, there is simply no evidence that Defendant-Appellant ever used the cellphone at issue, nor is there any evidence that Defendant-Appellant intended to use the cellphone for harmful purposes. The majority holds that "[t]he plain meaning of the phrase 'conduct

threaten[ing] the security of a penal institution' encompasses only offense and post-offense conduct creating a significant likelihood of harm to the security of a penal institution. Absent other aggravating circumstances, attempted violation of MCL 800.283a alone does not fall within that definition." Majority Opinion at 2. If the evidence on this record is potentially enough to result in a score of 25 points for OV 19, I don't know what could not pass muster in the eyes of a trial court inclined to assign such a score. Thus, I disagree with the majority's conclusion that there could be sufficient evidence to score OV 19 at 25 points on this record. There is no evidence on this record to indicate that Defendant-Appellant's "conduct create[d] a significant risk that an inmate will escape, cause physical harm to an inmate or corrections officer, or commit a crime in the outside world." Majority Opinion at 10. As the majority holds, "a prisoner's possession or attempted possession of a cellphone, by itself and absent any other aggravating conduct, does not meet the statutory criteria of creating a significant risk of harm to a prison's security under MCL 777.49(a)." *Id.* at 13.

Thus, based on the majority's holding that only offense and post-offense conduct that creates a significant likelihood of harm to the security of the penal institution necessitates a score of 25 points for OV 19, I would hold that there is insufficient evidence to score OV 19 at 25 points on this record. Therefore, I respectfully dissent from the majority's holding that there could be sufficient evidence to score OV 19 at 25 points on this record. I would reverse the judgment of the Court of Appeals, vacate Defendant-Appellant's sentence, and remand to the trial court for resentencing with a score of 0 points for OV 19.

III. CONCLUSION

In conclusion, I concur with the majority's conclusion that attempted violation of MCL 800.283a does not necessarily require a score of 25 points for OV 19, and that only offense and post-offense conduct that creates a significant likelihood of harm to the security of the penal institution necessitates a score of 25 points for OV 19. However, I would not extend our holding to MCL 777.49 as a whole; I would only analyze the statute as it relates to MCL 800.283a. I respectfully dissent from the majority's conclusion that there could be sufficient evidence to score OV 19 at 25 points on this record. I believe that there is insufficient evidence to score OV 19 at 25 points on this record, and thus, I would remand to the trial court for resentencing with a score of 0 points for OV 19.

Sarah I. Siegel

Applicant Details

First Name	**Cameron**
Last Name	**Silbar**
Citizenship Status	**U. S. Citizen**
Email Address	**cameronsilbar@gmail.com**
Address	**Address** Street **1221 W. 3rd St, 146** City **Los Angeles** State/Territory **California** Zip **90017** Country **United States**
Contact Phone Number	**8186443587**

Applicant Education

BA/BS From	**Flagler College**
Date of BA/BS	**December 2018**
JD/LLB From	**Loyola Law School** **http://www.lls.edu**
Date of JD/LLB	**May 21, 2023**
Class Rank	**5%**
Law Review/Journal	**Yes**
Journal(s)	**Loyola Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Delfino, Rebecca
rebecca.delfino@lls.edu
2137361498
Murphy, Erin
Erin.Murphy@lls.edu
Tighe, Maureen
maureen_tighe@cacb.uscourts.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

CAMERON SILBAR
1221 W. 3rd St., #146 • Los Angeles, CA 90017 • (818) 644-3587 • Cameron.Silbar@lls.edu

April 14, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am currently a third-year student at LMU Loyola Law School, where I am in the top five percent of my class with a GPA of 4.15 and a Senior Articles Editor for the Law Review. Throughout my studies, I have continually sought out opportunities to improve my litigation skills in both public and private practice. These experiences have included externing for Chief Judge Maureen Tighe of the U.S. Bankruptcy Court for the Central District of California, interning at the Los Angeles County District Attorney's office, serving as a summer associate at Gibson Dunn & Crutcher, and providing research assistance to Professor Rebecca Delfino. It is this same desire to improve that drives me to apply for a clerkship position in your chambers for the 2024 term.

As a research assistant to Professor Delfino, I researched cutting-edge legal issues facing courts and assisted her in drafting a law review article that addressed evidentiary issues surrounding the introduction of deepfake technology in courtrooms. My externship with Chief Judge Tighe, in turn, allowed me to build upon those research and writing skills while introducing me to the internal dynamics of federal court. While working in chambers, I was entrusted with drafting orders on a wide array of motions, and I became comfortable making recommendations to the Chief Judge and her clerks in areas of the law in which I initially had little familiarity. More recently, I had the opportunity to experience criminal and civil litigation from an advocacy perspective at the L.A. County District Attorney's Office—where I prepared a misdemeanor vandalism case for trial, drafted trial briefs, and conducted preliminary hearings—and at Gibson Dunn & Crutcher, where I drafted substantive memorandums, drafted sections of a deposition, and prepared requests for production.

My externship with Chief Judge Tighe taught me the invaluable benefit of judicial mentorship, and I hope to cultivate a similar relationship working in your chambers. To that end, please find enclosed my resume and law school transcript, as well as a writing sample and three letters of recommendation from Chief Judge Tighe and Professors Delfino and Erin Murphy. Thank you for your consideration.

Respectfully yours,

Cameron Silbar

Cameron Silbar

1221 W. 3rd Street, #146 | Los Angeles, CA 90017 | (818) 644-3587 | Cameron.Silbar@lls.edu

Education

LMU Loyola Law School — Los Angeles, CA
J.D. Candidate — May 2023
GPA/Rank: 4.15/Top 5% (13th/267) (Cumulative as of Fall 2022)
High Grades: Civil Procedure (A+* First Honors); Criminal Procedure (A+* First Honors & Student Model Answer); Adjudicative Criminal Procedure (A+ First Honors); Evidence for Trial Lawyers (A+* First Honors); Evidence (A+); Torts (A+); Property (A+); Appellate Advocacy (A+ First Honors)

Law Review: Loyola of Los Angeles Law Review, *Articles Editor* (Spring 2022 – Present)
Of Note: Poehls/Hobbs District Attorney Practicum, *Member* (Fall 2021 – Spring 2022); Sayre MacNeil Scholar (Fall 2021 – Present); St. Thomas Moore Honor Society (Fall 2021 – Present)

Flagler College — St. Augustine, FL
B.A. in Philosophy; Minor in Law *magna cum laude* — December 2018
GPA: 3.73
Honors: Department Award for Academic Achievement in Humanities (2018); President's List for outstanding academic achievement (2017); Omicron Delta Kappa Leadership Society (2015 – Present)
Athletics: Men's Soccer, *Captain* (Fall 2018); *Player* (Fall 2014 – Fall 2018)
- Earned a 100% scholarship for athletic excellence in senior season; All-Academic Team (2016, 2018)

Activities: Flagler College Mock Trial Team, *Member* (August 2016 – May 2017); Student Athlete Advisory Committee, *Member* (August 2016 – December 2018)

Experience

Gibson, Dunn & Crutcher LLP — Irvine, CA
Litigation Associate — Commencing Fall 2023
Summer Associate — May 2022 – July 2022
- Drafted memorandum regarding nuanced legal issue in a patent infringement case regarding whether user activation of dormant circuity constitutes a material modification so to preclude a finding of patent infringement
- Drafted research memorandum regarding Independent Medical Examinations in a case against the United States
- Drafted requests for production, and the background section of an expert witness for a deposition, in a case involving ERISA and Breach of Fiduciary Duty

Los Angeles County District Attorney's Office — Inglewood, CA
Certified Law Clerk — January 2022 – April 2022
- Prepared a misdemeanor vandalism case for trial, including drafting voir dire questions, writing opening and closing statements, and preparing for the direct and cross examination of witnesses
- Drafted trial briefs for oral argument, including a 1538.5 Motion to Suppress and a Motion in Limine
- Conducted preliminary hearings, interviewed witnesses, and prepared case summaries

U.S. Bankruptcy Court for the Central District of California — Los Angeles, CA
Judicial Extern to Chief Judge Maureen A. Tighe — Summer 2021
- Reviewed motions, prepared summaries of legal arguments and work-ups for court rulings involving default judgments and motions for relief from stay
- Researched and assisted in drafting ruling involving § 324 of the US Bankruptcy Code – Motion to Remove Trustee

LMU Loyola Law School — Los Angeles, CA
Research Assistant to Professor Rebecca Delfino — Summer 2021
- Assisted the Professor in developing new evidentiary rules to combat the impact of Deepfakes inside of the courtroom
- Helped to write law review article analyzing evidentiary issues surrounding the introduction of Deepfakes into the courtroom

Strange Family Vineyards — Malibu, CA
Tasting Room Manager — June 2019 – March 2020
- Established a tasting room and increased Club memberships by 100% in six months
- Calculated and organized all production needs including inventory, bottling, and labeling

Interests: Soccer, music, reading, exercise, wine, meditation, travel

Loyola Law School
Loyola Marymount University
Los Angeles

Student Name: **Cameron E. Silbar**
Student ID:
Program: **Law**

Printed: 02-15-2023

Transcript Summary

	Attempted Credits	Earned Credits	GPA
Law School Credits	75	73	4.15
Transfer Credits	--	--	--
Overall	75	73	4.15

2020 Fall Semester (08/17/2020 - 12/16/2020)
Program: Juris Doctor Day Program

LAWB1001	Contracts	Aragaki	5	A-	
LAWD1001	Criminal Law	Goldman	4	B+	
LAWJ1001	Civil Procedure	Zimmerman	2	A+*	I
LAWJ1002	Legal Research and Writing	Bensinger	2	A	I
LAWL1001	Property	Trisolini	3	A+	I

	Attempted Credits	Earned Credits	GPA
Term	16	16	3.88
Cum	16	16	3.88

2021 Spring Semester (01/11/2021 - 05/13/2021)
Program: Juris Doctor Day Program

LAWD1011	Adjudicative Criminal Procedure	Kennedy	3	A+	
	First Honors				
LAWJ1001	Civil Procedure	Zimmerman	3	A+*	I
	First Honors				
LAWJ1002	Legal Research and Writing	Bensinger	2	A	I
LAWK1001	Torts	Selmi	5	A+	
LAWL1001	Property	Trisolini	2	A+	I

	Attempted Credits	Earned Credits	GPA
Term	15	15	4.36
Annual	31	31	4.11
Cum	31	31	4.11

Dean's Honor List 2020-2021 Academic Year
Good Standing

2021 Summer Session 1 (05/24/2021 - 07/22/2021)
Program: Juris Doctor Day Program

LAWJ4005	Judicial Process Field Placement	Delfino	0	P
LAWJ5000	U.S. Bankruptcy Courts (Woodland Hills	Delfino	3	P

	Attempted Credits	Earned Credits	GPA
Term	3	3	0.00
Cum	34	34	4.11

2021 Fall Semester (08/16/2021 - 12/17/2021)
Program: Juris Doctor Day Program

LAWD4007	Criminal Procedure	Lapp	4	A+*	
	First Honors				
LAWJ2003	Evidence	Gold	4	A+	
LAWJ4119	Hobbs/Poehls Trial Advocacy	Poehls	3	A-	
LAWO6011	Law Review Staff	Hughes	1	P	I
LAWO7021	Byrne Trial Advocacy Team	Poehls	0	W	

	Attempted Credits	Earned Credits	GPA
Term	12	12	4.27
Cum	46	46	4.15

2022 Spring Semester (01/10/2022 - 05/12/2022)
Program: Juris Doctor Day Program

LAWC2003	Constitutional Law	Levinson	4	A	
LAWD5001	Hobbs/Poehls District Attorney Field Placement	Poehls	4	P	
LAWJ2004	Ethical Lawyering	Delfino	3	A	
LAWJ4015	California Civil Procedure: Practice & Procedure	Grossi	2	A	
LAWO6011	Law Review Staff	Hughes	1	P	I
LAWO9003	Hobbs/Poehls District Attorney Seminar	Poehls	1	A	

	Attempted Credits	Earned Credits	GPA
Term	15	15	4.00
Annual	30	30	4.14
Cum	61	61	4.12

Dean's Honor List 2021-2022 Academic Year
Good Standing

2022 Fall Semester (08/22/2022 - 12/20/2022)
Program: Juris Doctor Day Program

LAWA4003	Business Associations	Guttentag	4	A
LAWJ4012	Appellate Advocacy	Delfino	3	A+
	First Honors			
LAWJ4087	Evidence for Trial Lawyers	Murphy	3	A+*
	First Honors			
LAWJ8065	Fundamentals of Bar Exam Writing	Boylan Bakhshian	2	P
LAWO6012	Law Review Editor	Hughes	2	YL

	Attempted Credits	Earned Credits	GPA
Term	14	12	4.30
Cum	75	73	4.15

End of Transcript

- - - - - - -

Issued to:

CAMERON SILBAR
CAMERON.SILBAR@LLS.EDU
,

This transcript processed and delivered by Parchment

Justin Melchor, Law School Registrar

Loyola Law School
Loyola Marymount University
Los Angeles

919 Albany Street
Los Angeles, CA 90015-1211
(213) 736-1130
(213) 831-2485 (fax)
registrar@lls.edu | http://www.registrar@lls.edu

Loyola Law School, Los Angeles first opened its doors in 1920 and received its accreditation from the American Bar Association in 1937. In 1990, Loyola Law School was awarded a Chapter in the Order of the Coif in 1990. The Law School is currently a member of the Association of American Law Schools. In accordance with the Family Educational Rights and Privacy Act of 1974 (FERPA), transcripts cannot be released to a third party without the written consent of the owner of the record (student). As the first ABA-approved law school in California with a pro bono requirement for graduation, Loyola Law is committed to legal ethics and the public interest, and has produced top attorneys for nearly a century.

Academic Good Standing
All students, except first year law students in the J.D. Program are considered to be in good standing with the Law School unless stated otherwise. First year J.D. students are considered in good standing following the completion of their first year in law school.

Honors
First Honors (FH) - The First Honors Award is bestowed upon the student that received the highest grade in the class for all classes that are required to be normalized under the Law School's grading policy.

Juris Doctor (JD) Grading Scale

Numeric Grading Scale

Students entering the law school prior to Fall 2004 were issued numeric grades starting from a range of 55 – 100. Prior August 1999, 60 was the minimum grade required to earn credit toward a course. Beginning with the entering class of Fall 1999, 70 was the minimum grade required to earn credit toward a course. The grade of P indicates that the student would have earned a minimum letter grade of C but it is not equivalent to any letter grade. The grade of F was equivalent to the numeric grade of 55 and is counted in the grade point average. The grade of AU indicates course was audited.

Letter Grading Scale

Current Grading Scale (Effective 2004)

Grade	Grade Points	
A+*	4.667	
A+	4.333	
A	4.000	
A-	3.667	
B+	3.333	
B	3.000	
B-	2.667	
C+	2.333	
C	2.000	
D	1.333	
F	0.333	
P	0.000	Unit credit is received but is not included in the grade point average calculation and indicates a student may have earned at least a C but the grade is not the equivalent of any letter grade.

Course Numbering

Number	Classification
1000-1999	First Year (1L) courses
2000-2999	Second Year (2L) courses
3000-3999	Non JD courses
4000-4999	JD Advance Elective courses
5000-5999	Experiential courses (*i.e., Externship/Clinics/Workshops*)
6000-6999	Law Review courses
7000-7999	Intramural and Competition courses (*i.e., Moot Court, Advocacy Team competition,..)*
8000-8999	Summer Abroad courses
9000-9999	Non Classified courses

Mark	Explanation
AU	Audit -- No credit or grade is earned.
I	Incomplete -- All course requirements have not been satisfied.
W	Withdrawal -- Withdrew from the course prior to the conclusion of the semester.
YL	Year-Long enrollment. Final grade will be recorded following the assignment final grade at the end of the spring semester.

Class Rankings (JD Students Only)
Class percentile ranking for each year-of-study (YOS) and division are computed annually, based upon the relevant cumulative grade point average at the conclusion of the academic year (spring semester). The percentile rankings are expressed in grade point cut-offs for specific tiers for each year-of-study. The ranking tiers are expressed by the top five, ten, fifteen, twenty, twenty-five, thirty, thirty-five, forty, fifty and bottom fifty percent of each class. Class rankings are not divulged without the express consent of the student or graduate with a written request submitted to the Office of the Registrar.

Graduation Honors are awarded based on their cumulative GPA as follows; 4.23 and above summa cum laude and 4.03 – 4.22 magna cum laude. Students whose GPA is below 4.03 but rank in the top 10% of the graduating class will graduate cum laude. Dean's Honor List; Students are placed on the Dean's Honor List based on their annual grade point average (GPA). For students entering after Fall 2004 in the awardees will have a GPA of (3.83) or higher; for students who entered after Fall 2001 (85.00) and students prior to Fall 2001 (83.00).

Master of Laws Grading Scale

The current LLM grading system is an adjectival, based upon a five point scale for computational purposes to determine a grade point average. Grades on the L.L.M. grading system are not mandate to be normalized. For tuition purposes, a grade of "Fair" or "CP" equates to a "C" on the J.D. grading system.

Grade	Grade	Grade Points	Comments
EX	Excellent	5.000	
VG	Very Good	4.000	
GD	Good	3.000	
CP	Fair	2.000	
NC	No Credit	0.000	Included in calculation of GPA but no credit is earned.
PASS	Pass	0.000	Not included in calculation of the GPA but unit credit is earned.

Mark	Explanation
AU	Audit -- No credit or grade is earned.
Audited	Audit -- No credit or grade is earned.
I	Incomplete -- All course requirements have not been satisfied.
Incomplete	Incomplete -- All course requirements have not been satisfied.
W	Withdrawal -- Withdrew from the course prior to the conclusion of the semester.
YL	Year-Long enrollment. Final grade will be recorded following the assignment final grade at the end of the spring semester.

Prior to Fall 2002, the Law School used the numeric grading scale grades used for the Master of Laws (LL.M.) in Taxation program as referenced above.

LLM Tax Honors are awarded to graduates with the following cumulative grade point averages (with no rounding) will receive their Program degrees with the corresponding distinction: Cumulative grade point average ≥ 3.80 and < 4.20 "with distinction" Cumulative grade point average ≥ 4.20 and < 4.60 "with high distinction" Cumulative grade point average ≥ 4.60 "with highest distinction". Students meeting the requirements for graduation with Honors (as specified by Section 1.2 above) would then receive their degrees: Cumulative grade point average ≥ 4.00 and < 4.20 "with honors and distinction" Cumulative grade point average ≥ 4.20 and < 4.60 "with honors and high distinction" Cumulative grade point average ≥ 4.60 "with honors and highest distinction".

Repeated Courses
Repeated courses that are included in the grade point average calculation will bear a revision code of (I) to the right of the assigned grade. Conversely, a repeated course that is to be excluded from the grade point average calculation will bear the revision code of (E). Any course that is repeated will bear the revision code of E, except the last grade earned, which will have the revision code I.
Note: both revision codes I and E appear on the transcript in italicize and should not be confused with the mark of I which stands for Incomplete.

Revised 9/2015

April 18, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this letter to recommend Cameron Silbar for the position of judicial clerk in your chambers.

I met Mr. Silbar when he applied to serve as my research assistant after his first year of law school. In that capacity, he assisted in my scholarship in artificial intelligence and deepfakes. I found his research comprehensive and thorough. He made important contributions to that scholarship.

In the fall of 2022, Cameron was a student in my appellate advocacy class, where earned the highest grade in the class. Without a doubt, he was the top student in the class. Both his work product and engagement with the material were impressive. He demonstrated excellent legal writing, analysis, and research skills and an outstanding work ethic; he also made thoughtful and interesting contributions to the class discussions.

As his professor and employer, I have had multiple opportunities to review Mr. Silbar's oral and written skills and interact with him on various legal subjects inside and outside of the classroom. We have had an opportunity to speak about his desire to serve as a post-grad clerk in a judicial chamber. I encouraged him to apply because he has the required skill set to be an excellent law clerk; he is smart, intellectually curious, and able to synthesize legal concepts into cogent written analysis. Cameron is hardworking and committed, and thoughtful. He works well alone and with fellow law student colleagues. He also presents as having good personal and professional judgment. In addition, he has performed well in other courses at Loyola. His resume also shows a strong background of solid academic achievement at Loyola and other institutions. I give my highest recommendation and endorsement.

I would be happy to discuss Mr. Silbar with you in further detail upon your request.

Respectfully yours,

Rebecca A. Delfino
Associate Dean of Clinical Programs and Experiential Learning
Faculty Advisor Scott Moot Court Program
Professor of Law

Rebecca Delfino - rebecca.delfino@lls.edu - 2137361498

April 18, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to recommend Cameron Silbar as a law clerk in your esteemed chambers.

To give context to my opinions here, I would like to share a bit about myself. I graduated from Loyola Law School in 2012. For about five years, I have been a trial attorney in Office of the Federal Public Defender in Los Angeles. Before that, I clerked for the late Honorable Harry Pregerson on the Ninth Circuit Court of Appeals. Prior to clerking, I was an associate at the boutique criminal defense firm Lightfoot Steingard & Sadowsky LLP. I teach Litigating Evidence for Trial Lawyers at Loyola Law School. I am also the Secretary of the Federal Bar Association's LA Chapter.

I say all of this about myself only to underscore my faith in Cameron. I met him as a student in my class at Loyola. In this class, each student is assigned a real federal criminal or civil case file with evidentiary issues that were litigated. Every week, the students prepare to argue a position from that case file. Cameron always came to class thoroughly prepared, ready to present a cogent argument, and genuinely open to feedback. He showed true engagement with the law and consideration to all sides of an issue. I am familiar with his strong writing skills from two written motions. His writing is clear, concise, and well-reasoned. It was no surprise to learn that he earned the highest grade in my class, and that his academic record is otherwise superlative.

Cameron will be a fantastic clerk and lawyer. He has a unique blend of raw skill, devotion to excellence, and honest humility. This combination of traits is hard to find, yet I think essential to a successful law clerk. And from getting to know him and seeing him with his peers, I can say that he is a true pleasure to be around. I know how closely law clerks and chambers stuff must work together to support their judge, and anyone would be lucky to have Cameron on their team.

I hope this letter was helpful as your Honor consider applications. If you have any questions whatsoever, please do not hesitate to contact me at Erin_Murphy@fd.org, or at (480) 220-1828.

Respectfully yours,

Erin Murphy
Deputy Federal Public Defender
Office of the Federal Public Defender
321 E. 2nd Street
Los Angeles, CA 90012

April 18, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I unequivocally recommend Cameron Silbar for a clerkship in your chambers. Cameron worked as an extern for me during his first summer after law school. He wrote a few substantive memos for motions to dismiss as well as shorter motions for relief from the automatic stay. He also participated in an extensive extern education program. He was conscientious, thorough, and diligent. I have had externs every semester for almost 20 years. Cameron has been one of the best.

I have known Cameron since he was in kindergarten. Although I did not know him or his family well, I watched him grow up in the same schools as my daughter. I could tell how talented and hard-working he was even at a young age. I noticed him because he was shorter than most boys in elementary school but was easily the most talented kid on the soccer field and clearly worked harder than any other player. At the same time, he was an industrious and serious student. His kindness and good nature were already apparent to me then as he was unfailingly kind to my daughter who struggled in school with a learning disability.

I had moved and lost track of Cameron after high school graduation and was very pleased that I noticed his application when it arrived in chambers. It was only because of COVID and my law clerk working from home that day that I looked at the mail and even noticed his letter. In his usual humble way, Cameron did not ask anyone to contact me in advance or ask any favors. He simply applied in the usual way. I was curious whether he was still the same young man I had observed in high school. To my great pleasure, he was even more serious, kind and hard working.

I believe his work for you would be thorough and accurate. I have no doubt he would be a team player, taking care of whatever the judge's needs are. He has approached his legal studies in the same manner as he has approached things previously -- working on mastery and being one of the best.

Please feel free to contact me if I can answer any of your questions.

Respectfully yours,

MAUREEN TIGHE
U.S. BANKRUPTCY JUDGE

Maureen Tighe - maureen_tighe@cacb.uscourts.gov

Cameron Silbar
1221 W. 3rd St., #146, Los Angeles, CA 90017
(818) 644-3587
Cameron.Silbar@lls.edu

Writing Sample

Description:

The attached writing sample is a motion in limine that I wrote during Fall 2022. I wrote the motion for my Evidence for Trial Lawyers class, for which I earned an A+* and First Honors. Any edits to the brief are entirely my own.

For this assignment, the professor provided the opposition's motion in limine and a closed library of cases. The professor restricted the length of the motion to eight pages and requested that we omit the "Statement of Facts" section. Each student was assigned to either the US Attorney or the Federal Public Defender's Office.

In this case, the defendant was charged with aggravated sexual abuse. The prosecution hoped to introduce Doctor Burgess as an expert in "Rape Trauma Syndrome" to explain the purportedly counterintuitive behavior of the alleged victim S.R. during the sexual encounter. This motion argues that the US Attorney should be precluded from introducing expert testimony regarding "Rape Trauma Syndrome" in a sexual assault case for three reasons: (1) because the discipline is inherently unreliable; (2) because the expert testimony is not helpful to the trier of fact; and (3) because any purported probative value is substantially outweighed by its prejudicial effect.

Cameron Silbar
FEDERAL PUBLIC DEFENDER
Deputy Federal Public Defender
919 Albany
Los Angeles, California 90019
Telephone:
(818) 644-3587

Attorney for Defendant
JORGE MANUEL TEIXEIRA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JORGE MANUEL TEIXEIRA, Defendant.	Case No. 09-275-GHK **Motion In Limine to Exclude Government's Expert**

Defendant Jorge Manuel Teixeira, through his counsel of record Deputy Public Defender Cameron Silbar, hereby files this motion in limine to exclude the government's expert.

Respectfully submitted,

DATED: November 22, 2022

By /s/
Cameron Silbar
Attorney for TEIXEIRA

Table of Contents

I. INTRODUCTION

The admissibility of expert testimony is primarily governed by Federal Rules of Evidence 702 and 703 (hereinafter "Rule 702" & "Rule 703"). These rules impose a gatekeeping function on courts to ensure that any expert testimony admitted is not only relevant but reliable. *See* Fed. R. Evid. 702; *see also* Fed. R. Evid. 703. Specifically, Rule 702 requires expert testimony to be (1) helpful to the trier of fact; (2) based on sufficient facts or data; (3) the product of reliable principles and methods; (4) reliably applied to the facts in the present case. Fed. R. Evid. 702.

The prosecution's Rule 16 disclosure states that Dr. Burgess will testify to the following three items: (1) "that during the attack, S.R. complied with the intent to minimize sexual injury to herself"; (2) "that it is common for victims of sexual assault not to scream loudly for help or jump up and run during an attack"; and (3) that "victims of sexual assault often delay reporting a sexual assault and thus any delay by Ms. R in reporting the assault was not atypical." Gov't's Rule 16 Disclosure. This testimony is inadmissible "expert" testimony because it is inherently unreliable, and it invades the province of the jury.

II. ARGUMENT

A. Rape Trauma Syndrome as a Discipline Is Inherently Unreliable

To comply with the reliability requirement in Rule 702, the court in *Daubert* provided trial courts with a list of factors to consider when evaluating the reliability of expert scientific testimony. *See Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). These include: (1) whether a theory or technique can be (and has been tested); (2) whether the technique or theory has been subject to peer review and publication; (3) the known or potential rate of error of the technique or theory when applied; (4) the existence and maintenance of standards and controls; and (5) whether the technique or theory has been generally accepted in the scientific community. *Id*. at 592–94.

The courts gatekeeping function, and the application of these factors, has been extended to nonscientific testimony. *Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999). While no

single factor is determinative, courts must ensure that an expert, "whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Id*. at 141, 152.

To aid in this function, the Advisory Committee Notes to Rule 702 (hereinafter "ACN") offered supplemental factors for courts to consider when analyzing non-scientific testimony. These include: (1) whether the opinion grows from independent research or was developed for purposes of litigation; (2) whether the expert unjustifiably extrapolated from an accepted premise to an unfounded conclusion; (3) whether the expert adequately accounted for alternative explanations; and (4) whether the field is known to reach reliable results in the area of the proposed testimony. Fed. R. Evid. 702 Advisory Committee Notes.

Dr. Burgess' testimony is unreliable because it is based on the fundamentally flawed theory of rape trauma syndrome. *See State v. Saldana*, 324 N.W.2d 227, 230 (Minn. 1982) ("[R]ape syndrome is not the type of scientific test that accurately and reliably determines whether a rape has occurred."); *see also People v. Bledsoe*, 36 Cal. 3d 236, 250 (1984) ("Because the literature does not even purport to claim that the syndrome is a scientifically reliable means of proving that a rape occurred, we conclude that it may not properly be used for that purpose in a criminal trial."). That is because, "unlike fingerprints, blood tests, lie detector tests, etc. rape trauma syndrome was not developed to determine the truth or accuracy of a particular event." *Bledsoe*, 36 Cal. 3d at 250. Instead, it was developed by counselors as a therapeutic tool. *Id*.

One consequence of this practice being therapeutic instead of investigative is that counselors are taught not to probe their victims for inconsistencies. *Id*. Nor are counselors to independently investigate the allegations. *Id*. Instead, counselors are instructed to believe in the victim's story irrespective of all evidence to the contrary. *Id*. As professional literature on the topic indicates, "judgement is appropriate for courtrooms, not for psychologists' offices." Kilpatrick, *Rape Victims:*

Detection, Assessment and Treatment (Summer 1983) Clinical Psychologist 92, 94.

Dr. Burgess' article titled "Rape Trauma Syndrome" submitted as the Prosecution's "Exhibit A" reflects this lack of scrutiny. She writes, "the purpose of this paper is to report the immediate and long-term effects of rape *as described by the victim*." Burgess, *Rape Trauma Syndrome*, Am. J. Psychiatry 981 (1974) (emphasis added). Thus, her study, which serves as the basis for her expert opinion in this case, is not an independent investigative method designed to get at truth. Instead, it is a therapeutic tool designed to tell the story of victims. If "judgement is appropriate for courtrooms, not for psychologists," rape trauma syndrome is appropriate for counselors' offices, not for jurors.

Rape trauma syndrome as a discipline is also unreliable because it does not reflect symptoms that are unique to victims of rape. Instead, it is an "umbrella concept." *See Bledsoe*, 36 Cal. 3d at 250 ("The method does not consist of narrow set of criteria or symptoms whose presence demonstrates that the client or person has been raped; rather. . . it is an 'umbrella' concept, reflecting the broad range of emotional trauma experienced by the clients of rape counselors."); *see also Commonwealth v. Dunkle*, 529 Pa. 168, 173 (1992) ("[T]he principal flaw with the notion of a specific syndrome is that no evidence indicates that it can discriminate between sexually abused children and those who have experienced other trauma."). Dr. Burgess' article alludes to this when describing the syndromes effects: "the time of onset varies from victim to victim" and "women may experience an extremely wide range of emotions." Burgess, *supra* at 982. The issue then is that Dr. Burgess' litany of symptoms including "anger," "self-blame," "revenge," and a "wide gamut" of others, could just as easily be associated with any other kind of trauma. *Id*. at 983. Consequently, it is hard to see how such information would be "helpful to the jury." Instead, as will be discussed in part C, it runs the risk of prejudicing the jury with evidence of symptoms that could have arisen from unrelated trauma.

In sum, rape trauma syndrome is unreliable under either a strict application of the *Daubert* factors or ACN's factors. The discipline is inherently flawed; it is based on therapeutic rather than

investigative methods; and it fails to account for alternative explanations for its conclusions.

B. Dr. Burgess' Testimony Is Not Helpful to The Trier of Fact, And It Invades The Province of The Jury

Federal Rule of Evidence 704 (hereinafter "Rule 704") bars an expert witness from stating an opinion as to "whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense" because "those matters are for the trier of fact alone." Fed. R. Evid. 704. Relatedly, "it is the juror's responsibility to determine credibility by assessing the witnesses and witness' testimony in light of their own experience." *United States v. Binder*, 769 F.2d 595, 602 (9th Cir. 1985). Therefore, "an expert is not permitted to testify specifically to a witness' credibility or to testify in such a manner as to improperly buttress a witness' credibility." *United States v. Candoli*, 870 F.2d 497, 506 (9th Cir. 1989). Therefore, expert testimony is inadmissible to the extent it goes to an "ultimate issue" in the case and/or usurps the jury's function of assessing a witness's credibility.

The prosecution concedes it would be improper for Dr. Burgess to testify as to whether S.R. suffers from "rape trauma syndrome." Joint Mot. in Lim. 13. That is because such a determination is the ultimate issue facing the jury. *See* Fed. R. Evid. 704. Consequently, courts have reiterated that "rape trauma syndrome should not be utilized as the instrument to establish the guilt or innocence of one accused of rape." *See State v. Taylor*, 663 S.W.2d 235, 241 (Mo. 1984); *see also Bledsoe*, 36 Cal. 3d at 248 (holding that the prosecution's introduction of rape trauma syndrome as a means of proving that the rape had occurred was prejudicial error). To the extent that Dr. Burgess testifies to this effect her testimony is inadmissible.

Even in the absence of such a diagnosis, Dr. Burgess' testimony is still inadmissible because it usurps the role of the jury. For example, the court in *Binder*, overturned a defendant's conviction for child molestation where experts testified that the alleged victims had the ability to distinguish truth from falsehood. 769 F.2d at 598, 602. The court reasoned that even in the absence of testifying

specifically to the complaining witness's credibility, "the effect of this testimony was to bolster the children's story and usurp the jury's fact-finding function." *Id*. at 602. There was no need for this expert's testimony because jurors do not need additional assistance to determine whether victims are telling the truth. *See id*. The court contrasted the case with a situation wherein the experts were testifying as to the competency of the child to testify. *Id*. There, the expert testimony would be helpful to the jury, and it would not usurp their function. *Id*. However, the expert testimony as proffered, referencing those "particular children" in that "particular case" impermissibly asked the jury to accept the expert's determination that the children were being truthful. *Id*. Consequently, it was prejudicial error to allow that testimony in. *Id*.

Here too, Dr. Burgess's proffered testimony goes directly to S.R.'s credibility. Specifically, Dr. Burgess wants to testify that "S.R. complied with the [incident] to minimize sexual injury to herself," and "any delay by Ms. R in reporting the assault was not atypical." Gov't's Rule 16 Disclosure. The problem with these proffers, like in *Binder*, is that they effectively bolster S.R.'s credibility and usurp the jury's fact-finding function. Both proffers reference the "particular victim" in this "particular case"— exactly the kinds of considerations that concerned the *Binder* court. The introduction of this testimony, like in *Binder*, would be prejudicial error.

The prosecution also hopes to elicit a more general statement that "it is common for victims of sexual assault not to scream loudly for help or jump up and run during an attack." This is so general as to not be helpful to the jury, and yet it still runs the risk of providing a "stamp of scientific legitimacy" to what is essentially a jury's role of assessing the credibility of S.R.'s version of events. The prosecution is correct that in *Hadley*, *Atone*, and *Bighead*, the Ninth Circuit allowed in expert testimony about the general characteristics of sexually abused children. However, they are incorrect to the extent that they see those cases as analogous. Instead, *Hadley*, *Atone*, and *Bighead* are readily distinguishable from Mr. Texeira's because each of those cases involves children.

The Supreme Court of Minnesota in *Saldana* illustrates why this distinction is important. In *Saldana*, the defendant appealed his conviction for rape based on an expert witness who testified to general post-rape symptoms in concluding that the victim had not fantasized the rape. 324 N.W.2d at 231. The introduction of this testimony impermissibly invaded the jury's role in assessing the alleged victim's credibility because it was not helpful to the fact finder. *See id*. ("Once a victim is deemed competent, expert opinions concerning the witness's reliability in distinguishing truth and fantasy are generally inadmissible because such opinions invade the jury's province to make credibility determinations."). The court reasoned that the alleged victim was a competent adult so any testimony pertaining to general symptoms, such as a delay in reporting, bolstered her credibility without being helpful to the jury. *Id*. However, the court made clear that expert testimony pertaining to a witness's credibility is not always inadmissible. *Id*. Instead, it should only be allowed in "unusual cases" wherein it is helpful to the fact finder. *Id*. The court identified two such examples. First, if the victim is a child. *Id*. Second, in cases involving a mentally challenged adult. *Id*. However, since the alleged victim in the case was a competent adult, the introduction of testimony that bolstered her version of events only provided a scientific stamp of approval on an issue that the jury was well placed to decide themselves. *Id*.

Here too, S.R. is an adult woman whose competency has not been challenged. It is the jury's role to decide whether S.R.'s version of events is true. Like in *Saldana*, allowing in testimony that only serves to bolster her credibility, without any special need for the information in an "unusual case" does not help the fact finder. Instead, like in *Saldana*, the jury is well placed to determine whether S.R.'s lack of resistance points towards rape or consensual sex. This is not an unusual case involving a minor or a child wherein expert testimony would be helpful in providing the jury with a perspective that might be too foreign to them. *See United States v. Antone*, 981 F.2d 1059, 1062 (9th. Cir. 1992) (holding that testimony concerning general characteristics of sexually abused children to

explain that it was not unusual for children to fail to report a rape or to return to their abusers was properly introduced). As mentioned above, that is why each case the prosecution cites for the proposition that general rape characteristics are admissible involved the "unusual case" of children. *See* Joint Mot. in Lim. 1316. Allowing such testimony to come in, even in the absence of an unusual case, would constitute prejudicial error by invading the province of the jury without providing needed information to them.

C. The Testimony Is Inadmissible Because Any Purported Probative Value Is Substantially Outweighed by The Prejudicial Effect

Even if this Court finds Dr. Burgess' testimony helpful to the jury and reliable, it should still exclude the testimony because its introduction is substantially more prejudicial than probative. Federal Rule of Evidence 403 (hereinafter "Rule 403") excludes relevant evidence when its probative value is substantially outweighed by its prejudicial effect. Fed. R. Evid. 403. "Evidence is unfairly prejudicial when it is apt to be used for something other than its logical, probative force, e.g., when court members might dramatically overestimate its value, be confused as to its meaning, or emotionally react to it." *United States v. Tomlinson*, 20 M.J. 897, 901 (1985). In the context of experts, courts should look at the probative value as it relates to the soundness on which the opinion rests rather than its tendency taken as true to prove the fact at issue. *State v. Taylor*, 663 S.W.2d 235, 240 (Mo. 1984).

As illustrated, the doctrine of rape trauma syndrome and the symptoms it purports to reveal are, at best, suspect. Further, these general characteristics that the doctrine describes are not helpful to the jury because this is not an unusual case. Instead, what is at issue is two competent adults' interpretations of a sexual encounter. Dr. Burgess' purported testimony regarding whether victims flee, whether they scream, and whether they delay reporting does not aid the jury because they are already well situated to assess the truth of this generic rape allegation.

The evidence must be excluded when its low probative value is weighed against the prejudicial effect of providing a "scientific stamp of legitimacy" to S.R.'s testimony. The introduction of the

symptoms of rape trauma victims, even when stated generally, creates a special aura of reliability and trustworthiness in an area where jurors of ordinary ability are already competent to ascertain truth. *Saldana*, 324 N.W.2d at 230. For example, in *United States v. Sloan*, the court overturned an appellant's conviction for rape when a worker at a rape crisis center who counseled the victim after her hospital examination testified that she was "shocked, nervous, tense, and shakey." 811 F.2d 1359, 1364 (10th Cir. 1987). The prosecution proffered this testimony to show that the victim was held against her will during the rape. *Id*. The court held that such an introduction was prejudicial error even in the absence of the witness using the words "rape trauma syndrome" because the connection between the victims' general symptoms and the stated conclusion that she was raped was too tenuous. *Id*. In other words, because the probative value of the general symptoms was so low the testimony had to be excluded in the face of the massive risk of unfair prejudice from such a conclusion. *See id*.

As stated above, courts are clear that the prosecution cannot elicit testimony that S.R. suffers from rape trauma syndrome herself. That is in large part because that is the ultimate issue that the jury must decide. However, even in the absence of such a specific conclusion wherein Dr. Burgess' testimony is limited to more general characteristics, the probative value is so low as to demand exclusion in the face of the risk of unfair prejudice. This Court should exercise its discretion in excluding this testimony to ensure Mr. Teixeira's Sixth Amendment right to a fair trial.

III. CONCLUSION

For the foregoing reasons, the defense respectfully requests that the Court exclude Dr. Burgess' testimony because it is unhelpful to the jury, unreliable, and would create a risk of unfair prejudice that substantially outweighs any purported probative value.

Applicant Details

First Name	**Jared**
Last Name	**Silberglied**
Citizenship Status	**U. S. Citizen**
Email Address	**jsilberg@pennlaw.upenn.edu**
Address	**Address** Street **2400 Chestnut St Apt 2008** City **Philadelphia** State/Territory **Pennsylvania** Zip **19103** Country **United States**
Contact Phone Number	**6103894733**

Applicant Education

BA/BS From	**Franklin & Marshall College**
Date of BA/BS	**May 2020**
JD/LLB From	**University of Pennsylvania Carey Law School** **https://www.law.upenn.edu/careers/**
Date of JD/LLB	**May 20, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Penn Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Penn Law Keedy Cup**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Wolff, Tobias
twolff@law.upenn.edu
215-898-7471
Kreimer, Seth
skreimer@law.upenn.edu
215-898-7447
Lee, Sophia
slee@law.upenn.edu
215-573-7790

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jared Silberglied

2400 Chestnut St Apt 2008, Philadelphia PA 19103 • (610) 389-4733 • jsilberg@pennlaw.upenn.edu

June 12, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year law student at the University of Pennsylvania Carey Law School, and I am writing to apply for a clerkship position with you beginning in the Fall of 2024.

I am a public interest student, and my primary career interest is in impact litigation. To that end, I have taken advantage of many opportunities to improve my research and writing skills throughout my 2L year. Through my work in Penn's Appellate Advocacy class, my participation in Penn's Keedy Cup moot court competition, and my comment writing for Penn Law Review, my research and writing skills have continued to grow and improve. This summer, I am interning with the ACLU DE conducting work on various litigation projects, and my skills have grown further through this real-world experience.

I have enclosed my resume, law school transcript, undergraduate transcript, and writing sample. I have also enclosed letters of recommendation from Professor Seth Kreimer (skreimer@law.upenn.edu), Professor Sophia Lee (slee@law.upenn.edu), and Professor Tobias Wolff (twolff@law.upenn.edu). Please let me know if any other information would be useful. Thank you for your time and your consideration.

Respectfully,

Jared Silberglied

Jared Silberglied

Enclosure

Jared Silberglied

2400 Chestnut St. Apt. 2008, Philadelphia PA 19103 • (610) 389-4733 • jsilberg@pennlaw.upenn.edu

Education

University of Pennsylvania Carey Law School | Philadelphia, PA *August 2021-Present*
J.D. Candidate, May 2024

- Senior Editor, Vol. 172 | *University of Pennsylvania Law Review*; Dorothy E. Roberts Public Interest Essay Competition Committee
- Member of Penn Carey Law Moot Court Board – Chairperson of Case Selection Committee. Quarterfinalist for Penn Law Keedy Cup moot court competition.
- Independent study on a circuit split in the First Amendment state action doctrine in government use of social media.
- Penn Democracy Law Project (pro bono organization): incoming Vice President, previously served as Pennsylvania Democracy Project Manager. Organized election protection activities for the 2022 midterms. Organized a non-partisan research project on the candidates for the 2023 PA Supreme Court election.
- Student Public Interest Network Events Chairperson: organizing events for PI students to gather and network.
- Other *pro bono* work: research for writing a memo on Texas local redistricting issues for the Texas Civil Rights Project. Continuing direct services immigration work with HIAS PA.

Franklin & Marshall College | Lancaster, PA *August 2016-May 2020*

- B.A. in Government, Minor in Theater
- *Summa Cum Laude*
- Honor Societies: *Phi Beta Kappa* Honor Society; *Pi Gamma Mu* National Social Science Honor Society; *Pi Sigma Alpha* Political Science Honor Society
- Thesis: comparing private prisons to Hannah Arendt's concept of unreality in *The Origins of Totalitarianism*
- Awards: Richard F. Schier Memorial Prize for a student who has shown exceptional aptitude in the study of American government and politics; Sidney Wise Public Affairs Internship Award for a student showing outstanding academic and service work who seeks to work in public affairs
- Activities: Treasurer of F&M Players student-run musical theater group for two years and Co-Director of one show for the club; Philanthropy Co-Chair for Phi Sigma Pi National Honors Fraternity for one semester

Work Experience

ACLU DE | Wilmington, DE *Summer 2023*
Summer Legal Intern

- Conducting legal research and writing on present and potential litigation matters.
- Assisting in the drafting of complaints to be filed in the District of Delaware.

HIAS PA | Philadelphia, PA *Summer 2022 (continuing on a pro bono basis)*
Summer Legal Intern – Naturalization Team

- Assisted clients seeking to become US citizens with filling out their N-400 Application for Naturalization, and when applicable their N-600 Certificate of Citizenship form for their children.
- Screened clients seeking forms of immigration relief who did not know what they could potentially qualify for – issue spotted to see what categories of relief clients could potentially fit into.

City Year, AmeriCorps | Washington, DC *August 2020-June 2021*
AmeriCorps Member

- Served on a team of AmeriCorps Members in a low-income public middle school.

- Co-taught in four 7th grade math classes across varying levels.
- Worked as a support in the whole classroom setting and as an individual teacher in small group settings.
- Organized clubs to focus on developing students' social and emotional learning and promote attendance.
- Selected by the team as their representative to the Corps Council to help solve problems among the whole Washington D.C. corps.

Lancaster Stands Up | Lancaster, PA *Summer 2019*
Summer Intern

- Helped plan and organize a variety of community events including rallies and fundraisers.
- Researched PA education funding policy and traveled to the PA House of Representatives to lobby for more equitable education funding.
- Helped set the baseline for establishing a new membership system.
- Researched and reached out to candidates running for local offices.

Interests

- Musical theater
- Competition reality TV
- Film & TV criticism and commentary

Record of: Jared H Silberglied
Penn ID: 25468499
Date of Birth: 26-JUN
Date Issued: 28-MAY-2023

U N O F F I C I A L Page: 1

The University of Pennsylvania

Level:Law

Primary Program
Program: Juris Doctor
Division : Law
Major : Law

SUBJ	NO.	COURSE TITLE	SH	GRD	R
INSTITUTION CREDIT:					
Fall 2021					
Law					
LAW	500	Civil Procedure (Wolff) - Sec 1	4.00	B+	
LAW	502	Contracts (Galbraith) - Sec 1	4.00	A	
LAW	504	Torts (Allen) - Sec 1A	4.00	A	
LAW	510	Legal Practice Skills (Diaz)	4.00	CR	
LAW	512	Legal Practice Skills Cohort (Simonovsky)	0.00	CR	
Ehrs: 16.00					
Spring 2022					
Law					
LAW	501	Constitutional Law (Shanor) - Sec 1	4.00	A	
LAW	503	Criminal Law (Heaton) - Sec 1A	4.00	A	
LAW	510	Legal Practice Skills (Diaz)	2.00	CR	
LAW	512	Legal Practice Skills Cohort (Simonovsky)	0.00	CR	
LAW	601	Administrative Law - 1l (Lee)	3.00	B+	
LAW	734	Reproductive Rights and Justice (Roberts)	3.00	B+	
Ehrs: 16.00					
Fall 2022					
Law					
********** CONTINUED ON NEXT COLUMN **********					

SUBJ	NO.	COURSE TITLE	SH	GRD	R
Institution Information continued:					
LAW	5550	Professional Responsibility (Landau)	2.00	A	
LAW	6120	Appellate Advocacy (Sanghvi)	3.00	A-	
LAW	6740	Constitutional Litigation (Kreimer)	4.00	A	
LAW	8020	Law Review - Associate Editor	1.00	CR	I
LAW	9140	Power, Injustice, and Change in America (Sutcliffe)	3.00	A	
Ehrs: 13.00					
Spring 2023					
Law					
LAW	6340	Environmental Law (Welton)	3.00	A	
LAW	6410	Employment Law (Lee)	3.00	A	
LAW	8020	Law Review - Associate Editor	0.00	CR	I
LAW	8130	Appellate Advocacy Preliminary Competiton (Gowen)	1.00	CR	
LAW	9410	Voting Rights (Abel)	3.00	A	
Ehrs: 10.00					
LAW	9460	Political Authority and Political Obligation (Perry)	3.00	IN PROGRESS	
LAW	9990	Independent Study (Wolff)	3.00	IN PROGRESS	
In Progress Credits 6.00					

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Accreditation: Middle States Association of Colleges and Schools (MSA)

Student Information
Student Name: Jared Hayden Silberglied
Numeric Identifier: Not Provided By the Sending School
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P.O. Box 3003
Lancaster, PA 17604-3003
717-291-4168

STUDENT ACADEMIC RECORD

Date Issued: 27-OCT-2020
Page: 1

Record of: Jared Hayden Silberglied

Issued To: jared62698@gmail.com

Class Rank: 22/600
Course Level: Undergraduate

Current Program
Program : Bachelor of Arts
Major : Government

Minor : Theatre

Comments:
Sidney Wise Public Service Internship Award
Pi Gamma Mu National Social Science Honor Society
Pi Sigma Alpha Political Science Honor Society
Richard F. Schier Memorial Prize
in Political Science
Phi Beta Kappa Honor Society
For Spring 2020 only, P represents D- and above.

Degree Awarded Bachelor of Arts 16-MAY-2020
Inst. Honors: Summa Cum Laude

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:						
Pre-Matric		ADVANCED PLACEMENT				
BIO	179	Biology	1.00	TR		
CPS	111	Comp Sci A	1.00	TR		
GEN	178	Statistics	1.00	TR		
GEN	179	Eng Lang/Comp	1.00	TR		
HIS	221	European History	1.00	TR		
HIS	238	U.S. History	1.00	TR		
MAT	109	Calculus BC	1.00	TR		
Ehrs: 7.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00						
INSTITUTION CREDIT:						
Fall 2016						
CNX	104	America in the Age of Nixon	1.00	A	4.00	
HIS	237	American History, 1491-1865	1.00	A	4.00	
JST	101	Elem Modern Hebrew I	1.00	A-	3.70	
MAT	111	Calculus III	1.00	A	4.00	
Ehrs: 4.00 GPA-Hrs: 4.00 QPts: 15.70 GPA: 3.93						
Honors List						
Spring 2017						
CNX	200	Israel in Context	1.00	A-	3.70	
ECO	100	Intro to Economic Principles	1.00	A	4.00	
********** CONTINUED ON NEXT COLUMN **********						
Institution Information continued:						
JST	102	Elem Modern Hebrew II	1.00	A	4.00	
PHI	122	Intro to Moral Philosophy	1.00	A	4.00	
Ehrs: 4.00 GPA-Hrs: 4.00 QPts: 15.70 GPA: 3.93						
Honors List						
Fall 2017						
BOS	200	Strategies for Organizing	1.00	A	4.00	
GOV	100	American Government	1.00	A	4.00	
JST	201	Intermediate Modern Hebrew I	1.00	A	4.00	
TDF	186	Acting I	1.00	A	4.00	
Ehrs: 4.00 GPA-Hrs: 4.00 QPts: 16.00 GPA: 4.00						
Honors List						
Spring 2018						
GOV	120	Comparative Politics	1.00	A	4.00	
GOV	314	The American Constitution	1.00	A	4.00	
NSP	149	Life on Mars	1.00	A	4.00	
TDF	283	Playwriting I	1.00	A-	3.70	
Ehrs: 4.00 GPA-Hrs: 4.00 QPts: 15.70 GPA: 3.93						
Honors List						
Fall 2018						
ENG	225	Intro to Creative Writing	1.00	B+	3.30	
GOV	130	International Politics	1.00	A	4.00	
GOV	250	Political Research	1.00	A	4.00	
TDF	110	Foundations of World Theatre	1.00	A	4.00	
TDF	285	Acting IId: Improvistation	1.00	A	4.00	
Ehrs: 5.00 GPA-Hrs: 5.00 QPts: 19.30 GPA: 3.86						
Honors List						
Spring 2019						
BOS	332	Law, Ethics & Society	1.00	A	4.00	
GOV	200	Understanding Public Policy	1.00	A	4.00	
GOV	242	Modern Political Theory	1.00	B+	3.30	
TDF	229	Lighting Design	1.00	A	4.00	
Ehrs: 4.00 GPA-Hrs: 4.00 QPts: 15.30 GPA: 3.83						
Honors List						
********** CONTINUED ON PAGE 2 **********						

FRANKLIN & MARSHALL
Office of the Registrar
P.O. Box 3003
Lancaster, PA 17604-3003
717-291-4168

STUDENT ACADEMIC RECORD

Date Issued: 27-OCT-2020
Page: 2

Record of: Jared Hayden Silberglied

Class Rank: 22/600

From Franklin and Marshall College to jared62698@gmail.com on 10/27/2020 10:45 AM TRAN000020482704

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
Institution Information continued:						
Fall 2019						
AMS	280	American Landscape	1.00	P	0.00	
GOV	208	The American Presidency	1.00	A	4.00	
GOV	445	Hannah Arendt	1.00	A	4.00	
SOC	100	Intro to Sociology	1.00	A	4.00	
	Ehrs: 4.00	GPA-Hrs: 3.00 QPts: 12.00	GPA: 4.00			
Honors List						
Spring 2020						
GOV	315	Civil Rights & Civil Liberties	1.00	A	4.00	
TDF	278	Latina/o/x Drama& Theatre Hist	1.00	A	4.00	
TDF	385	Production Studio	1.00	A	4.00	
TDF	386	Directing	1.00	A	4.00	
	Ehrs: 4.00	GPA-Hrs: 4.00 QPts: 16.00	GPA: 4.00			
Honors List						

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	33.00	32.00	125.70	3.93
TOTAL TRANSFER	7.00	0.00	0.00	0.00
OVERALL	40.00	32.00	125.70	3.93

********** END OF TRANSCRIPT **********

FRANKLIN & MARSHALL COLLEGE
OFFICE OF THE REGISTRAR

TRANSCRIPT KEY

ACCREDITATION
Franklin & Marshall College is accredited by the Middle States Association of Colleges and Schools as a degree granting institution at the baccalaureate level.

CALENDAR AND CREDIT SYSTEM
Franklin & Marshall College operates on a semester basis and uses a course credit system. Thirty-two course credits are required for graduation. A typical course is assigned one course credit which is the equivalent of four semester hours of credit.

Franklin & Marshall College operated an Evening Division Program until 1991. Course credits earned in this division are represented with semester hours, the typical course being assigned 3 semester hours.

NUMBERING SYSTEM
Prior to Fall semester, 1988, a one or two digit course number was utilized with no system-wide logic. Beginning with the Fall semester of 1988, a 3 digit system was put into place with 100-299 representing lower level undergraduate courses and 300-499 representing upper level undergraduate courses.

TRANSFER CREDIT
Course credits accepted in transfer from other institutions are listed under appropriate headings. The course numbers and titles reflect Franklin & Marshall equivalents. Grades posted to the transcript from transferred courses will be preceded by a "T." If "TR" is noted on the transcript for a transfer course, a grade of C- or better was required for credit to be awarded. Transcripts of work completed at other institutions must be received directly from the other institution.

GRADING SYSTEM

Grade	Quality Points
A	4.0
A-	3.7
B+	3.3
B	3.0
B-	2.7
C+	2.3
C	2.0
C-	1.7
D+	1.3
D	1.0
D-	0.7
F	0.0
P (Pass)	0.0
NP (No Pass)	0.0
W	Withdrew
I	Incomplete
NG	No Grade Submitted
NC	Non-Credit Course
UR	Unrecorded

REPEAT POLICY
A student may repeat a course with a D+, D, D-, F or "NP" grade. Prior to Fall 1993, both grades were calculated into the grade point average (GPA). If a course was repeated during or after Fall 1993, only the second grade is calculated into the GPA. Both grades appear on the transcript with notations to the right to indicate that the course was repeated. The original grade is noted with an "E" to indicate that the grade is excluded from the GPA. The second grade is noted with an "I" to indicate that the grade is included in the GPA. In both cases, only one course credit may be earned.

A STUDENT IS ASSUMED TO BE IN GOOD STANDING UNLESS OTHERWISE INDICATED

From Franklin and Marshall College to jared62698@gmail.com on 10/27/2020 10:45 AM TRAN000020482704

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Jared Silberglied

Dear Judge Walker:

It is my pleasure to recommend Jared Silberglied for a clerkship in your chambers following his graduation from Penn Law School in 2024. I have worked with Jared twice: once in a large class when he was my student in Civil Procedure during his 1L year and once on an independent writing project in his second year. In both settings, Jared has shown himself to be bright, energetic, and analytically sophisticated. He does good work, is an adept writer, and has all the skills that would make for an excellent judicial clerk. I am very happy to offer him my enthusiastic recommendation.

Jared was my student during his first semester of law school in Civil Procedure. The class was a large one of over 100 students and my opportunities to get to know Jared that semester were more limited, but he made a positive impression. He came by office hours on a couple of occasions and was always clear, focused and incisive in his questions. Jared accumulated a strong overall transcript in his first year and did good work in Civil Procedure. The B+ he earned on the exam certainly reflected a solid performance but does not capture the acumen he exhibited during the semester. I am glad that Jared was not shy about asking me to serve as a recommender even though he performed better on some of his other exams that year. My view of his abilities has been amply proven by his spectacular overall performance. His stellar grades put him near the top of his class.

I worked most closely with Jared during his second year in conjunction with a paper he wrote under my direction as an independent study. Jared was interested in the question of when and whether public officials could be held accountable under the First Amendment when they used social media accounts and blocked or otherwise disadvantaged other users whose viewpoints they did not like. The question is a complicated one, requiring an examination of the state action doctrine, the public forum doctrine, and the interaction between the two. Lower federal courts have divided on this question and the Supreme Court has just agreed to take it up in their next Term. Jared has not taken the class on the First Amendment, a fact that gave me some concern when he said he wanted to tackle such a doctrinally difficult topic, but I need not have worried. Over the course of several months, Jared framed the project well, did deep and thorough research, and came up with an approach to analyzing this doctrinal question that led him to conclude that the split of authority among the lower federal courts did not constitute a split at all. Rather, he concluded that the features of the state action and public forum doctrines that courts were grappling with overlapped more than they acknowledged. His writing is clear, analytically deft, and well crafted. It is a very good project.

On a personal level, Jared is likeable and enthusiastic. Even though the independent study project we worked on together was daunting at times, he tackled it with excitement and gusto. Jared has an easy and winning smile and a charming manner — his background in theater shines through. I expect he would contribute to the happiness as well as the productivity of any chambers. This is a talented, affable young man who is easy to like. While I know Jared a little less well than some other students I recommend, I am confident in endorsing him with enthusiasm and I do so with no reservations.

Please do not hesitate to let me know if I can be of any further assistance in your review of Jared's candidacy. I can be reached most easily on my cell phone at 415-260-3290 or by email at twolff@law.upenn.edu.

Very truly yours,

Tobias Barrington Wolff
Jefferson Barnes Fordham Professor of Law
Deputy Dean, Alumni Engagement and Inclusion
Tel.: 215.898.7471
Email: twolff@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Jared Silberglied

Dear Judge Walker:

Jared Silberglied is an editor on our Law Review, and a member of our Moot Court board. He has asked me to write in support of his application for a clerkship with your chambers. I do so with pleasure.

Mr. Silberglied began his academic career as a Government major at Franklin and Marshall College. Over the course of his undergraduate studies, Mr. Silberglied found himself engaged by legal issues, from the problem of equitable funding of education to the role of private prisons in American society in light of the philosophy of Hannah Arendt. He graduated summa cum laude in 2020, as a member of multiple honor societies, and found law school a natural next step. But before law school Mr. Silberglied wanted the opportunity to engage on the ground with some of the challenges he had studied. He therefore enlisted in Americorps to teach middle school in Washington, D.C.

Mr. Silberglied's tenure in Americorps overlapped with the high tide of COVID 19. He tells me that trying to help his students through that upheaval made his work in Washington, D.C. the hardest and most rewarding year of his life. Mr. Silberglied was able to see his students in person only twice, in outdoor gatherings, but he treasured his work with them. In addition to his own teaching responsibilities, he was chosen to represent his Americorps colleagues in regional efforts to gather and share best practices for online learning.

Mr. Silberglied arrived at Penn Law with a theoretical framework for engaging with difficult analytical problems and a grounding in hard work and commitment. He has flourished. Academically, Mr. Silberglied received an "A" grade in 7 of his first 11 courses. He has taken leadership in providing research assistance and organization for election protection activities. He has organized his colleagues to provide mutual support for students seeking public-interest careers. He has worked with clients seeking immigration relief through HIAS PA.

In his second year, I had the pleasure of teaching Mr. Silberglied in my small upper level class in Constitutional Litigation. That course, which is often taken students on their way to federal clerkships, requires students to wrestle with an extensive array of full text cases involving some of the most challenging areas of federal jurisdictional and substantive constitutional analysis. It ranges from the arcana of Section 1983 and Bivens actions through the Eleventh Amendment to issues of abstention and interjurisdictional preclusion. Although he was only a second year student, Mr. Silberglied mastered refractory material and submitted one of the strongest exams in the class. On the basis of four decades of teaching at Penn Law, I can predict that Mr. Silberglied has the combination of intellectual acuity, initiative and capacity for hard work that will make him a fine law clerk.

I urge you to meet Mr. Silberglied and take advantage of his talents.

Sincerely,

Seth F. Kreimer
Kenneth W. Gemmill Professor of Law
Tel.: (215) 898-7447
E-mail: skreimer@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Jared Silberglied

Dear Judge Walker:

Jared Silberglied is an excellent legal writer and analyst who is quick on his feet and has a razor-sharp mind. Well-balanced, with a dry wit and easy rapport with his peers, he will get along well in chambers. I recommend him to you for a clerkship with great enthusiasm.

Jared has a quick mind and is a strong oral arguer. I taught Jared Administrative Law in his first year of law school and Employment Law in his second year. His active, high-quality engagement distinguished him quickly in both classes. He was consistently alert and engaged, earning my highest marks for his voluntary participation and when cold-called. In Employment Law, his performance on the frequent hypotetheticals I introduced was especially impressive. He quickly distilled the doctrine we had learned and applied it to the hypotheticals with accuracy, nuance, and sophistication. His quick thinking and strong communication skills will serve him well in a clerkship.

Jared is also an outstanding legal writer and analyst who will excel in a clerkship. He performed impressively on his Employment Law exam. I design my exams to mirror real world assignments: they are word-limited, 24-hour take home exams. Excelling requires not only spotting and analyzing issues well, but also demonstrating excellent writing and sound judgment as to which issues to focus on and at what depth. Jared earned a high A, receiving extra points for excellent legal writing and top marks on a number of his analyses. Indeed, I even identified two as candidates for my model answer memo and noted in my records the excellent overall quality of his exam. I was pleased to see that his exam performance had improved since Administrative Law, in which he did well on the exam, but did not have as consistently excellent a performance. His experience in my classes mirrors his overall academic trajectory and I am confident after his performance in Employment Law that he can excel at the writing and analytic demands of a clerkship.

Jared is well-rounded and engaged outside of the classroom as well as within. He balances the more academic honors of serving as Associate Editor for our Law Review with leadership roles in our student-run democracy law pro bono projects and public interest student organization. Jared also mixes his high classroom engagement and academic seriousness with a dry wit and love for musical theater. All-in during class, he also seems to have a strong rapport with his classmates.

A rigorous thinker, strong communicator, and talented legal writer, Jared will be an excellent clerk. Focused and engaged, he can also work collaboratively and get on well with peers. I recommend him to you for a clerkship with great enthusiasm.

Sincerely,

Sophia Z. Lee
Professor of Law
Tel.: (215) 573-7790
E-mail: slee@law.upenn.edu

This is a brief written for Penn Carey Law's appellate advocacy class. The factual scenario is based on a real habeas case in the Third Circuit. However, the questions presented to the class for this assignment were different from those decided in the real case. In addition, no materials from the real case were referenced for this brief. Citations in the fact section are to the "factual background" (FB) and joint appendix (JA) provided by the professor.

This brief was written independently with no supervision. High-level feedback was given by the class's professor on an outline for the brief and draft of the first issue (PDF pages 16-25), but no specific feedback was given or incorporated. This version contains no edits from the final product that was turned in during the class, and no feedback was ever given on the second issue (PDF pages 26-36). If you would like to see a more academic-style piece where zero feedback was provided, please let me know.

This brief contains all the sections of the brief as originally submitted. To skip to the Argument section, please go to PDF page 16. For an excerpt that focuses on theoretical legal issues, please read PDF pages 16-25. For an excerpt that focuses on fact-to-fact comparisons, please read PDF pages 26-36.

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STATEMENT OF JURISDICTION

The District Court properly maintained subject matter jurisdiction of this case under 28 U.S.C. §2254. This statute allows district courts to entertain applications for writs of habeas corpus from a person in custody pursuant to the judgement of a state court when they assert that their custody violates the U.S. Constitution and/or federal laws. 28 U.S.C. §2254(a). That is the case here as Mr. Han Tak Lee has been convicted in state court and is now seeking a writ of habeas corpus that his custody violates the U.S. Constitution. JA 5. The District Court denied the certificate of appealability required to appeal a denial of habeas relief under 28 U.S.C. §2253(c). JA 8. This final judgment was issued on September 22, 2010. JA 13. Mr. Lee then filed a notice of appeal to the Third Circuit on October 21, 2010, within the 30-day period required for appeals. JA 13. The Third Circuit decided to grant a certificate of appealability under §2253(c). JA 9. Since the certificate of appealability has been granted by the circuit court, it now has jurisdiction to hear the appeal. 28 U.S.C. §2253(c). This appeal arises from the final judgment of the District Court that left no issues unresolved. JA 8.

While AEDPA was meant to limit the role of habeas courts, it certainly did not eliminate them. The Act limits jurisdiction by prohibiting federal habeas courts from reviewing "any claim that was adjudicated on the merits in State court proceedings." 28 U.S.C. §2254(d). But a federal freestanding claim for actual innocence was not an issue that was actually litigated in the state courts. While it is true that issue preclusion principles require federal courts to respect state court decisions about federal law, that only applies when those issues were actually litigated in the state courts. 28 U.S.C. §1738. Because that was not the case here, it is the federal court's

responsibility to examine the issue anew. There is no state court decision that needs respect given that the state court did not decide this issue.

STATEMENT OF QUESTIONS INVOLVED

The Court has presented two questions for argument. First, should a "freestanding" claim of actual innocence be recognized under the federal habeas statute, 28 U.S.C. §2254? If yes, is the new evidence discovered in Mr. Lee's case adequate to grant relief given the standard "a petitioner must show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt?"

STATEMENT OF RELATED CASES AND PROCEEDINGS

No case or proceeding related to the present action has been presented to this Court before. There are no other proceedings in this action that are currently present before any other court.

STATEMENT OF THE CASE

I. Factual Background and Trial

Mr. Han Tak Lee is a US citizen who lived with his daughter, Ji Yun, in Queens, NY. FB 1-2. Ji Yun was struggling with mental health issues. FB 3. As a religious man, Mr. Lee sought advice from his local Christian community about how he could help his daughter, and they recommended that he go to a Christian religious retreat for Korean Americans in the Poconos with her. FB 4. In July of 1989, the Lees went to Hebron Camp. FB 5. During the early morning hours of their first night there, the cabin that they were staying in caught fire. FB 10. Mr. Lee woke up to heavy smoke in the cabin. FB 63. He saw fire in Ji Yun's room, but did not see her, and so he assumed she had already gotten outside. FB 63. He ran outside and did not see her, and

so he ran back into the cabin to look for her and call out for her. FB 63. He was scared away by the fire and ran outside and stood by the cabin. FB 63.

Local firefighters arrived in response to a 911 call, and they observed flames coming from all parts of the cabin. FB 14. It took approximately 45-60 minutes to extinguish the fire. FB 18. After the fire was extinguished, Ji Yun's dead body was discovered near the bathroom door of the cabin. FB 22.

Trooper Jones then arrived at the scene to observe the body. FB 43. Trooper Jones was a county fire marshal in addition to his job as a state trooper. FB 38. He noted that the body was extensively burned, which seemed odd to him as that would normally be indicative of a much longer fire. FB 43. This was especially the case since the sheetrock and plaster that fell from the ceiling and coated the body should have provided insulation from the flames. FB 43. There was also a board lying across her body despite no indications that it struck her while she was alive. FB 43. Trooper Jones was puzzled by these signs, but moved on without giving them much thought. FB 43.

The body was then transferred to the coroner's office run by Mr. Allen. FB 25. He decided to conduct a carbon monoxide test to help determine whether Ji Yun was dead or alive at the time that the fire started. FB 25. He observed that the carbon monoxide blood level was 9.5%, which indicated to him that Ji Yun most likely died within seconds of the fire starting. FB 25. He made this observation because accidental fire deaths typically have carbon monoxide blood levels between 30-70%. FB 42. He also noticed bruises on the body's neck that could have been indicative of strangulation. FB 27. He then called Dr. Mihalikis in to help him conduct further evaluations. FB 27. He observed that there were only faint traces of smoke deposits in the

air passageways, which indicated to him that Ji Yun was not breathing for long while smoke was in the air. FB 52.

Mr. Allen then called Trooper Jones to report these findings to him, which indicated to him that he should search for signs of arson. FB 42. Based on his personal experience investigating fires, he found multiple signs indicating arson, and identified the origin point of the fire as Mr. Lee's bedroom in the cabin. FB 44-46, 49. He then went to interview Mr. Lee. FB 47. He observed that Mr. Lee had suffered minimal injuries, and he had a rather upbeat attitude, joking and laughing at some of the questions asked. FB 47. When the rest of Mr. Lee's family arrived later that day, Trooper Jones observed that they were emotionally distraught while Mr. Lee himself still showed little emotion. FB 47. In the meantime, Detective Bortz conducted an interview with Mr. Lee. FB 57. The detective observed that Mr. Lee's demeanor was calm like that of a spectator. FB 57-58. Despite Mr. Lee's denial that he had killed his daughter, the detective decided to arrest him due to the evidence of arson. FB 60.

Mr. Lee stood for a murder trial in September of 1990. FB 11. At the trial, the Government called on Trooper Jones as an expert witness to discuss the signs of arson. FB 38. It also called on Mr. Aston, a local fire protection consultant, to discuss the same. FB 55. Both witnesses concluded that in their professional experience, this was homicide by arson. FB 49, 56. The Government also called on Dr. Mihalikis to testify about the forensic evidence. FB 50. He stated that the low carbon monoxide blood levels and low smoke deposits indicated that there were two possible causes of these circumstances – either a flash fire or already being near death at the time that the fire started. FB 52. In his opinion, due to the origin point of the fire, it would not have been possible for Ji Yun to walk into a flash fire and have the body end up where it did, and so he concluded that the only possibility was that she was near death at the time that the fire

began. FB 53. Furthermore, a NY police officer testified about a fight she observed between Mr. Lee and Ji Yun that occurred the morning before they traveled to Hebron Camp.

Mr. Lee's defense attorney consulted with another fire investigator before trial, but that investigator agreed with Trooper Jones and Mr. Aston's conclusions that this was arson. FB 69. As such, Mr. Lee's defense did not dispute the Government's theory that this was arson. JA 16. Mr. Lee's defense instead argued that the evidence was just as likely to establish that Ji Yun was the one who set the fire, not him. JA 16. The jury rejected this argument and found Mr. Lee guilty of first-degree murder and arson. FB 11. The judge then sentenced him to life without parole. FB 11. Mr. Lee tried appealing his conviction to the Pennsylvania Superior Court, but he was unsuccessful. FB 67.

II. Lentini's Affidavit and State PCRA Proceedings

Over the course of several years, Mr. Lee obtained new counsel and filed for a new trial under Pennsylvania's Post Conviction Relief Act. FB 68. Mr. Lee was able to obtain new evidence in the form of an affidavit from a world-renowned fire expert recognized by the U.S. Department of Justice, John Lentini, which was central to his PCRA petition. FB 70; JA 40. The Government agreed that a court would qualify Lentini as an expert in fire investigation and that, if called to testify, he would testify consistent with his affidavit. FB 70.

Lentini's affidavit thoroughly and utterly refuted the evidence of arson that Trooper Jones and Mr. Aston presented at trial. JA 41. Lentini explained that fire science had developed substantially between Mr. Lee's trial in 1990 and the time of the affidavit in 2005. JA 42. He pointed to many new handbooks that the scientific community agreed comprised the consensus of the research. JA 42. He explained that the standard text that Trooper Jones and Mr. Aston relied on was considered good science at the time but had since become woefully outdated and

was filled with inaccuracies when it comes to determining whether a fire was arson or accidental. JA 44. He stated these misconceptions that Trooper Jones and Mr. Aston relied upon as follows:

- Fire temperatures and speed are not valid indicators of arson. JA 45.
- Holes burned in the floor indicate neither the origin point of a fire nor the presence of flammable liquids. JA 49.
- Flashover, a common phenomenon in all fires, can produce all the artifacts that experts previously believed were indicators of accelerants. JA 52.
- "Crazed glass," glass exhibiting a network of fine cracks, does not speak to the cause or origin of a fire. JA 55.
- The condition of furniture springs cannot determine whether a fire was accidentally started from a cigarette. JA 58.
- Calculating fuel load does not provide a valid means for determining the cause of a fire. JA 59.
- Depth of char does not indicate how long a piece of wood was exposed to a fire, meaning that this does not give any valid indication of an origin point. JA 62
- Char blisters, known as "alligatoring," do not indicate the speed of the fire. JA 63

Furthermore, Lentini explained that some of Trooper Jones and Mr. Alston's statements were inaccurate even at the time of trial:

- A "normal" temperature fire is capable of melting copper and no additional materials are needed to bring a fire up to the temperature to melt copper. JA 66.
- Mr. Aston testified with an unscientifically justifiable high degree of precision, which could have misled the jury into thinking that he was more knowledgeable than he was. JA 68.
- Mr. Aston's account for the excess Btus at the crime scene in terms of two different ignitable liquids defied the laws of physics. JA 69.
- Mr. Aston claimed that he had investigated 15000 fires in his life, but such a number would have required him to investigate 750 per year, even though most full-time fire investigators can only conduct 150 per year. JA 70.

As such, Lentini concluded that all the evidence presented was consistent with an accidental fire, even though he could not definitively say whether the fire was accidental or arson, and that no competent investigator could conclude that this was arson. JA 78. He stated that all the testimony

to the contrary misled the jury and the defense counsel into accepting the theory that the fire was intentionally set. JA 78.

Armed with Lentini's affidavit, Mr. Lee filed his PCRA petition. FB 70. Trooper Jones and Mr. Aston stood by their trial testimony, and so the Government decided to rely on them instead of introducing new evidence. FB 71. The trial court did not hold an evidentiary hearing and denied the PCRA petition without making any findings of fact and without ruling on his actual innocence claim. FB 72-73. The trial court did this on the basis that, in its view, Lentini's affidavit was mere impeachment of the Government's expert witness, and under state law, impeachment was not enough to grant post-conviction relief. JA 15. The Superior Court of Pennsylvania agreed and affirmed the ruling. JA 15. The Supreme Court of Pennsylvania denied review. FB 73.

III. Mr. Lee's Habeas Petition in the District Court

Having exhausted his state remedies, Mr. Lee then filed a petition for federal habeas review pursuant to 28 U.S.C. §2254 in the Middle District of Pennsylvania seeking a new trial. FB 74. Mr. Lee claimed that he was entitled to a "freestanding" claim of actual innocence under the U.S. Constitution. JA 5. The idea behind this claim is that if a prisoner obtains new evidence that demonstrates that they are innocent of the crime they were convicted of the U.S. Constitution entitles them to relief. A "freestanding" claim is different from the "gateway" claim that the Supreme Court recognized in *Schlup* since the latter requires that there be some additional independent constitutional violation at trial besides the habeas petitioner's contention that they are actually innocent of the crime. *Schlup v. Delo*, 513 U.S. 298, 315-16 (1995).

The District Court reached the merits of Mr. Lee's claim. JA 6. However, it denied the existence of a freestanding claim of actual innocence. JA 6. The District Court believed that

outside of additional guidance from the Third Circuit or the Supreme Court, the latter's language in *Herrera v. Collins* foreclosed this avenue of relief. JA 6-8.

Initially, the District Court did not find a basis for issuing a certificate of appealability, which is typically required for a petitioner to appeal a denial of habeas under 28 U.S.C. §2253(c). JA 8. However, on Mr. Lee's filing of a notice to appeal, the Third Circuit stepped in and issued a certificate of appealability. JA 9. The certificate directed the parties to address two issues: 1) whether a freestanding claim of actual innocence is available in habeas relief, and 2) if so, whether Mr. Lee is entitled to this relief under the existing record given the standard "a petitioner must show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." JA 9.

STANDARD OF REVIEW

When a state court does not reach the merits of a habeas petitioner's claims, the habeas court reviews this question of law *de novo*. *Cone v. Bell*, 556 U.S. 449, 472 (2009). And when analyzing a District Court's decision of pure law, the appellate court reviews that decision *de novo*. *Pullman-Standard v. Swint*, 456 U.S. 273, 287 (1982). For the first issue, since the decision whether to recognize a freestanding claim of actual innocence under 28 U.S.C. §2254 and the U.S. Constitution is a pure question of law, that issue is reviewed *de novo*. As for the second issue, this Circuit has previously held that it reviews the probability determination that no reasonable juror would convict *de novo*. *Munchinski v. Wilson*, 694 F.3d 308, 335 (3d Cir. 2012). As such, the appropriate standard of relief for both issues is *de novo*.

SUMMARY OF THE ARGUMENT

To begin, this Circuit should recognize that the U.S. Constitution contains principles that allow a habeas petitioner to seek relief via a freestanding claim of actual innocence. The

Supreme Court left the door open for this relief during its decision in *Herrera*. *Herrera v. Collins*, 506 U.S. 390, 417 (1993). While it did not explicitly hold that this relief was available, it assumed for the sake of argument that it would be. *Id.* And as Justice O'Connor stated in her well-noted concurrence, it is unquestionably unconstitutional event to execute a factually innocent person. *Id.* at 419 (O'Connor, J., concurring). Both the Supreme Court and this Circuit have continually held that this relief would theoretically be available in the right case. *Schlup*, 513 U.S. at 317; *Albrecht v. Horn*, 485 F.3d 103, 122 n.6 (3d Cir. 2007).

And the legal principles for recognizing this claim are sound. This is a right that should be located in the concepts of substantive due process. The Supreme Court has held that rights are part of substantive due process when they are part of the history and tradition of the Nation. *Washington v. Glucksberg*, 521 U.S. 702, 710 (1997). And the U.S. has a history and tradition of recognizing that convicting innocent people is a terrible sin. *In re Winship*, 397 U.S. 358, 372 (1970) (Harlan, J., concurring). That history and tradition suggests that we must recognize this right as part of substantive due process. Furthermore, letting an innocent person remain in prison despite evidence of their actual innocence "shocks the conscience," which further supports that it must be recognized as part of substantive due process. *Rochin v. California*, 342 U.S. 165, 172 (1952).

In addition, the Eighth Amendment requires that a freestanding claim of actual innocence be recognized. While the Eighth Amendment typically prohibits excessive punishments, the legitimacy of punishment is intertwined with ideas of guilt. *Herrera*, 506 U.S. at 434 (White, J., concurring). The basic principle behind the Eighth Amendment is that punishments cannot be disproportionate to the crime. *Gregg v. Georgia*, 428 U.S. 153, 173 (1976). Inherit in that idea is that if a person can prove that they did not commit a crime, any punishment would be

disproportionate, which suggests that a freestanding claim of actual innocence must be recognized.

Furthermore, this claim must be recognized in life without parole cases. *Herrera's* language is somewhat couched in the ideas animating death penalty jurisprudence. *Herrera*, 506 U.S. at 417. But the legal principles that underlie this claim do not change based on the type of punishment imposed, and life without parole is still an extreme punishment that is akin to a slow death penalty. Rebecca Charles, Note, Deconstructing the Paradox of the Constitutional Incarceration of Innocent Citizens, 85 Mo. L. Rev. 247, 261-67 (2020). And this Court has previously indicated that it would analyze a hypothetical *Herrera* claim even outside the death penalty context. *Wright v. Superintendent Somerset SCI*, 601 Fed.Appx. 115, 118 (3d Cir. 2015). As such, this Court should recognize a freestanding claim of actual innocence.

Once a freestanding claim of actual innocence is recognized, Mr. Lee is entitled to relief based on the standard laid out in the certificate of appealability. The certificate stated that the Court would use the standard "a petitioner must show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." JA 9. This is equivalent to the *Schlup* standard. *Schlup*, 513 U.S. at 327.

To satisfy this standard, first the petitioner must present new reliable evidence. *Goldblum v. Klem*, 510 F.3d 204, 225 (3d Cir. 2007). And Lentini's affidavit satisfies the standard for reliable evidence under *Munchinski*. 694 F.3d at 336.

Next, the affidavit must do more than contain mere impeachment evidence. *Munchinski*, 694 F.3d at 338. And under *Sawyer*, the affidavit does far more than that by focusing on the new science instead of merely attacking the credibility of the Government's expert witnesses. *Sawyer v. Whitley*, 505 U.S. 333, 349 (1992).

The Supreme Court has held that to satisfy the *Schlup* standard, the new evidence must take apart the prosecution's central theory of the case to the point where there is barely any remaining evidence pointing towards the petitioner's guilt. *House v. Bell*, 547 U.S. 518, 553-54 (2006). The Third Circuit has refined this in stating that if there is still evidence pointing towards the petitioner's guilt, the *Schlup* standard has not been satisfied. *Albrecht*, 485 F.3d at 125. While the Government points to a few elements in this case that could still point to guilt, they are not enough to support a conviction absent the central theory of arson.

Furthermore, another way to satisfy the *Schlup* standard is if the new evidence creates a better theory for the case than the prosecution's original theory. *Munchinski*, 694 F.3d at 336. And here, accepting a theory of an accidental fire solves some of the issues that the Government's theory could not solve at trial.

In addition, the Government assigns too much weight to Lentini's inability to draw a conclusion. The Government bases this position on language in *Albrecht* that stated because new fire science could not definitively rule out arson and there was ample other evidence of guilt, *Schlup* had not been satisfied. *Albrecht*, 485 F.3d at 121. But in making this argument, the Government ignores the critical "other elements of guilt" part of the opinion. Furthermore, the standard does not require absolute certainty. *House*, 547 U.S. at 538.

Finally, when all the other issues are cleared away, no reasonable juror could believe beyond a reasonable doubt that Mr. Lee was guilty of this crime. All reasonable jurors would credit Lentini's affidavit over the Government's expert witnesses. As such, no reasonable juror could believe beyond a reasonable doubt that this was arson. Without the fire science pointing to the central arson theory, the Government has no case left. This means that Mr. Lee has satisfied the *Schlup* standard and is entitled to relief.

ARGUMENT

I. The Third Circuit Should Recognize a Freestanding Claim of Actual Innocence for Habeas Relief

This Court must recognize for the first time that there is a constitutional right to be free from prison when one is actually innocent of the crime that they were convicted of, and that the appropriate remedy for these circumstances is a freestanding claim of actual innocence under habeas law. A "freestanding claim of actual innocence" means that a habeas petitioner can obtain relief based on new evidence obtained that demonstrates that they are innocent of the crime that they were convicted of. *Schlup*, 513 U.S. at 315-16. This claim is said to be "freestanding" because it does not involve the violation of any other constitutional rights and instead asserts that being free from wrongful incarceration is instead its own constitutional violation. *Id. Herrera* left the door open for courts of appeals to recognize this form of relief, and this circuit must go through that door now. The right to be free when no crime has been committed is deeply embedded in the history and traditions of the US, and so it must be recognized as part of substantive due process. Even if this history and tradition are not present, the prevailing standards of the modern day show that locking up the innocent is cruel and unusual punishment that violates the Eighth Amendment.

A. *Herrera* and Subsequent Cases Leave the Door Open for a Freestanding Claim of Actual Innocence to be Recognized

The Supreme Court and this circuit have recognized on many occasions that a freestanding claim of actual innocence could possibly be cognizable under the right circumstances. In *Herrera*, a man was convicted of murdering a police officer and was sentenced to death. *Herrera*, 506 U.S. at 394. Years later, the man obtained new evidence of his innocence

in the form of affidavits from his brother's attorney and former cell mate, both of whom claimed that the man's brother had admitted to them that he was the one who killed the officer. *Id.* at 396. The man filed for federal habeas relief. *Id.* While the Supreme Court refused to hold that a freestanding claim of actual innocence existed in this man's case, it did "assume for the sake of argument . . . that in a capital case a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional and warrant federal habeas relief." *Id.* at 417. While it did not explicitly hold that avenue was open, it implied that it could be in extraordinary circumstances. *Id.* And as Justice O'Connor stated in her oft quoted *Herrera* concurrence, "the execution of a legally and factually innocent person would be a constitutionally intolerable event." *Id.* at 419 (O'Connor, J., concurring).

The Supreme Court and this circuit have both continued to maintain that this claim could be recognized under the right circumstances without explicitly holding that it is available. *See Schlup*, 513 U.S. at 317 ("[A] *Herrera*-type claim . . . [may exist if] the federal habeas court is itself convinced that those new facts unquestionably establish [the plaintiff's] innocence."); *Albrecht*, 485 F.3d at 122 n.6 ("[W]e must analyze the merits under the implied *Herrera* standards that recognize freestanding innocence claims"). The only reason why no federal court has previously recognized this avenue for relief is because no case has come before the courts that satisfied *Herrera's* "extraordinarily high" requirement for relief.[1] But the implicit acknowledgment of this form of relief demonstrates that the legal principles surrounding it are sound.

[1] Because this court has provided a different standard of review in its certificate of appealability (as discussed further below), we do not need to address whether Mr. Lee's case meets *Herrera's* "extraordinarily high" standard.

B. Actual Innocence Must be Recognized as a Substantive Due Process Right Because it is Within the History and Tradition of the U.S. and Shocks the Conscious to Disregard

Substantive due process contains a right to be free from prison when a criminal defendant is actually innocent of the crime for which they are accused. The standard defining when substantive due process rights are recognized is contained in *Washington v. Glucksberg*. In *Glucksberg*, the plaintiffs sought to challenge a Washington state law that prohibited physician assisted suicide under principles of substantive due process. *Glucksberg*, 521 U.S. at 707-08. The Court noted that in all cases analyzing substantive due process "[W]e begin . . . by examining our Nation's history, legal traditions, and practices." *Id.* at 710. The Court then extensively analyzed the history and tradition of assisted suicide in the U.S. and found that there was a long history and tradition of not allowing this practice. *Id.* at 707-719. Using this history and tradition as a "guidepost," the Court concluded that a right to assisted suicide was not contained within substantive due process. *Id.* at 721.

The idea that innocent people should be free from incarceration is fundamental to the history and tradition of our Nation, so it must constitute a substantive due process right. As Justice Harlan famously stated, there is "a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." *In re Winship*, 397 U.S. at 372 (Harlan, J., concurring). This principle has had nearly complete and long-standing acceptance amongst the states. *Id.* And there has been virtually unanimous adherence to it in common law jurisdictions dating back to the founding of the Nation. *Id.* at 361. Because we have a history and tradition of not convicting innocent people, we must recognize that right as part of substantive due process.

This history and tradition alone are enough to establish a substantive due process right. While *Glucksberg* stated that history and tradition were "guideposts" and not determining factors, it held that they should be used that way to "direct and restrain our exposition" of substantive due process. *Glucksberg*, 521 U.S. at 721. While a lack of history and tradition must alert us to constraining substantive due process, the existence of it must compel us to recognize that the right in question is part of it.

But even if history and tradition alone are not enough to establish this right within substantive due process, the "shocks the conscience" test provides further support for locating this right there. In *Rochin*, police officers entered a man's house on a tip that he was selling narcotics. *Rochin*, 342 U.S. at 166. The man swallowed some pills when the officers entered. *Id.* The officers then took the man to a hospital where they forcibly pumped his stomach against his will, causing him to throw up the pills, which were identified as morphine. *Id.* He was then charged and convicted of possessing morphine, with the principal evidence against him being the swallowed pills. *Id.* The Court held that this conduct "shocks the conscience" in a way that could not possibly be constitutional under principles of due process. *Id.* at 172.

While the "shocks the conscience" test is a little difficult to apply, it provides further support that we must recognize actual innocence as part of substantive due process. *See Fagan v. City of Vineland*, 22 F.3d 1296, 1308 (3d Cir. 1994) (referring to the shocks the conscience test as an amorphous and imprecise inquiry) Simply put, it would shock the conscience to allow a person to remain in prison despite them obtaining new evidence that demonstrates their actual innocence. This is more than just preferential policy. To disallow freestanding claims of actual innocence would be a fundamental injustice that cannot possibly be supported by due process of law without shocking the conscience.

Furthermore, multiple states have recognized a freestanding claim of actual innocence as part of substantive due process in their own jurisdictions. For example, the Supreme Court of Illinois held that "[i]mprisonment of the innocent would [] be so conscious shocking to trigger operation of substantive due process." *People v. Washington,* 171 Ill.2d 475, 487-88 (Ill. 1996). While it accepted the idea that a person previously convicted beyond a reasonable doubt must ordinarily be viewed as guilty, it discussed that truly persuasive evidence of actual innocence would undermine that legal presumption and would thereby eliminate the barrier to substantive due process. *Id.* Most recently, the Supreme Court of Iowa held that "[h]olding a person who has committed no crime in prison strikes the very essence of the constitutional guarantee of substantive due process." *Schmidt v. State,* 909 N.W.2d 778, 793 (Iowa 2018). The Third Circuit must follow these courts' lead in finding this right within substantive due process.

The Government maintains that a *Herrera* claim is based on principles of procedural due process, not substantive due process, but that consideration is irrelevant in determining whether a freestanding claim of actual innocence should be recognized. The idea that this is about procedural due process comes from Justice O'Connor's *Herrera* concurrence where she posits that the question before the Court is whether "a fairly convicted and therefore legally guilty person is constitutionally entitled to yet another judicial proceeding in which to adjudicate his guilt anew." *Herrera,* 506 U.S. at 420. While this was the question before the Court in *Herrera,* that does not mean that it needs to govern all future investigations of a freestanding claim of actual innocence. The question before the court today is not whether due process requires another proceeding for Mr. Lee; it is whether this Nation has a history and tradition of not compelling innocent people to serve time in prison for crimes that they did not commit such that

it must be recognized as a fundamental due process right of all Americans. That history and tradition does exist, and so this right must be recognized as central to substantive due process.

C. Even if this Court Does Not Believe that a Freestanding Claim of Actual Innocence is Located in Substantive Due Process, it Must Instead Find that Right in the Eighth Amendment

There are also compelling reasons to find this right within the Eighth Amendment. The Eighth Amendment tends to examine methods of punishment rather than guilt. *Herrera,* 506 U.S. at 406. But as Justice White made clear in his concurring opinion, "legitimacy of punishment is inextricably intertwined with guilt." *Id.* at 434 (White, J., concurring). Regardless of the posture in which the question is presented, a person seeking habeas relief is challenging the state's right to punish them, which falls within the Eighth Amendment. *Id.* at 433.

The basic outline of Eighth Amendment jurisprudence is that punishments cannot be grossly disproportionate to the severity of the crime. *Gregg,* 428 U.S. at 173. A necessary implication of this principle is that we cannot punish people for crimes that they did not commit. If there has been no crime, any punishment is inherently "grossly disproportionate."

Furthermore, the Eighth Amendment is not a static doctrine, and rather evolves based on contemporary standards of decency. *Atkins v. Virginia,* 536 U.S. 304, 311-12 (2002). Determining what these standards are is meant to be an objective judgment. *Id.* And given that, as discussed above, the Nation has a longstanding history and tradition of recognizing that we do not convict innocent people that prevails to the modern day, we must understand that contemporary standards of decency suggest that people have an opportunity to prove their actual innocence. *Herrera* was decided in the mid-90's at the height of criminal justice "reforms" that saw more and more people getting locked up. But over the past 20-30 years, our standards have

evolved and changed into a landscape of more decriminalization. The courts must recognize and follow that societal shift by recognizing this claim.

D. A Freestanding Claim for Actual Innocence Must be Recognized when a Prisoner is Sentenced to Life Without Parole

The principles underlying a freestanding claim for actual innocence suggest that this form of relief must be available in cases that go beyond just capital punishment, specifically, cases that involve life without parole. The Government contends that even if *Herrera* relief would be available, *Herrera* itself limits this relief to only capital cases. Concededly, *Herrera* does, on the surface, seem to suggest this. When assuming that a freestanding claim of actual innocence could exist, the Court specified that they were referring to capital cases. *Herrera*, 506 U.S. at 417. And in Justice O'Connor's concurrence, she expounds on "the fundamental legal principle that executing the innocent is inconsistent with the Constitution." *Id.* at 419 (O'Connor, J., concurring). And even one state court that found a freestanding claim for actual innocence in its own state law found that this claim only applied to capital cases. *Compare State ex rel. Armine v. Roper*, 102 S.W.3d 541, 547 (Mo. 2003) (finding a freestanding claim for actual innocence under state law) *with In re Lincoln v. Cassady*, 517 S.W.3d 11, 22 (Mo. 2016) (declining to extend the relief recognized in *Armine* to a non-capital case).

Nevertheless, the legal principles for recognizing a freestanding claim for actual innocence in life without parole cases is sound. Habeas relief is meant to be "a bulwark against convictions that violate fundamental fairness." *Engle v. Isaac*, 456 U.S. 107, 126 (1982). That principle does not change based on the type of conviction. The main pushback against this relief

is a respect for the finality of the judicial process. Charles, 85 Mo. L. Rev. at 261.[2] But when an actually innocent person is denied a remedy simply because they were sentenced to life without parole instead of the death penalty, the public perception of the integrity of the judicial system is put at risk. *Id.* at 262. To the public perception of the judicial system, there is not a significant difference between an innocent person who is sentenced to death and an innocent person sentenced to die in prison under life without parole. *Id.* at 263. As a special master for the Supreme Court of Missouri stated, "[o]nly the most tortured logic could yield the conclusion that a [non-death penalty defendant] must continue to serve a life sentence but would [walk] free if only he had been sentenced to death." *Id.* at 267.

Furthermore, this Court has previously examined a freestanding claim of actual innocence in a non-death penalty context. In *Wright*, this Court analyzed whether the burden had been met for a *Herrera* claim in a case where a prisoner was sentenced to only 20-40 years in prison. *Wright*, 601 Fed.Appx. at 118. In discussing *Herrera*, this Court stated that "the *Herrera* Court left open the possibility of a freestanding claim of actual innocence (particularly in the capital context)." *Id.* at 120. Importantly, stating that this claim is analyzed "particularly" in the capital context is different from saying that it is "only" available in the capital context. And if indeed it were "only" available in the capital context, this Court could have rested its decision in *Wright* simply on that fact instead of analyzing whether the claim had met *Herrera's* standard. The Court's decision to go ahead with that analysis demonstrates that the claim must be available in non-capital contexts.

[2] Another major pushback against habeas relief is principles of federalism and comity. *Bell v. Cone*, 535 U.S. 685, 693 (2002). But for reasons discussed further below, this is also not a barrier to recognizing a freestanding claim of actual innocence.

In addition, there are several states which have already recognized that there should be no distinction between death penalty and life without parole cases for the purposes of a freestanding claim of actual innocence. Notably, the *en banc* Court of Criminal Appeals of Texas found that excerpts from all the opinions in *Herrera* suggested that the incarceration of an innocent person would be just as much a violation of the federal Due Process Clause as the execution of such a person would be, meaning that a freestanding claim of actual innocence needed to be available to both such parties. *Ex parte Elizondo,* 947 S.W.2d 202, 205 (Tex. Crim. App. 1996) (en banc). And most recently, the Supreme Court of Iowa has allowed a freestanding claim of actual innocence even though there is no death penalty in the state, stating "[w]hat kind of system of justice do we have if we permit actually innocent people to remain in prison?" *Schmidt,* 909 N.W.2d at 789.[3]

While this principal may suggest that all actual innocence claims could be brought under habeas regardless of the length of the sentence being questioned, we can accept a limiting principle. This case only needs to decide that freestanding claims of actual innocence apply to life without parole; it need not decide any questions further than that.[4] And while we generally have an expression that "death is different," perhaps the better way to phrase it is that *life* is different. And understanding that the death penalty and life without parole are both punishments that extend to the end of life, they can be looked at similarly in this context. After all, life in

[3] Several other states have also recognized this form of relief for non-death penalty prisoners, including: South Dakota (*Engesser v. Young*, 856 N.W.2d 471 (S.D. 2014)), Connecticut (*Summerville v. Warden, State Prison*, 641 A.2d 1356 (Conn. 1994)), Florida (*Jones v. State,* 591 So.2d 911 (Fla. 1991)), and New Mexico (*Montoya v. Ulibarria,* 142 P.3d 476 (N.M. 2007)).
[4] Granted, since this Court was willing to examine a *Herrera* claim in *Wright* despite a sentence of "only" 20-40 years in prison, there may indeed be room for extending this remedy further. However, there is no need to decide that question in deciding this case.

prison is not significantly different than the death penalty and essentially serves as a slow-acting death penalty.

E. Principles of Federalism Do not Prevent Federal Courts from Hearing this Freestanding Claim of Actual Innocence

Recognizing a freestanding claim of actual innocence is not the same as empowering federal courts to retry claims that were already litigated in state courts. In *Bell*, the Court recognized that the intention of AEDPA was to limit federal habeas courts' jurisdiction to ensure that they were not retrying state cases and to ensure that state convictions were given effect to the full extent possible. *Bell*, 535 U.S. at 693. Federal habeas courts are meant to act within the bounds of comity and finality towards state criminal convictions. *Williams v. Taylor*, 529 U.S. 362, 381 (2000); *see also Younger v. Harris*, 401 U.S. 37, 44 (1971) (declaring that Our Federalism requires federal courts to act with comity and respect towards state criminal proceedings).

While the role of our federal system is important, it is ultimately more important that constitutional rights are vindicated. Ideally, state courts will vindicate constitutional rights. But there are times (as recognized in §1983 and a variety of other federal statutes) where states do not adequately vindicate federal rights, and so then federal courts must step in. This must be one of those scenarios. It is ultimately the job of federal courts to review states to make sure they are complying with the federal Constitution. And since it is a federal constitutional right for an actually innocent person to not be incarcerated, the federal courts must be vigorous in enforcing that right when the states fail to do so. As such, the federalism concerns of giving a habeas petitioner a second opportunity to present their evidence in a different forum must be bypassed to ensure the vindication of constitutional rights.

II. Once a Freestanding Claim of Actual Innocence is Recognized, Mr. Lee is Entitled to Relief Under the Standard Stated by This Court

In the Certificate of Appealability, This Court stated that it would apply *Schlup's* standard to a *Herrera* claim for actual innocence, and Mr. Lee has presented evidence adequate to meet that standard. While this standard is high, it can be achieved when the petitioner's new evidence takes apart the prosecution's entire theory of the case and no other evidence points to the petitioner's guilt. Lentini's affidavit matches this standard, and the Government was not able to point to any other significant evidence of Mr. Lee's guilt. As such, Mr. Lee meets the standard for an actual innocence claim.

A. Mr. Lee has Presented Reliable Evidence that Allows him to Proceed to the Merits of his *Schlup* Claim

To obtain relief under the *Schlup* standard, "a petitioner must show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." *Schlup*, 513 U.S. at 327. This standard requires a habeas court to take in all evidence concerning the petitioner's innocence regardless of whether it would typically be admissible in court. *Id.* at 328. The court must not make its own independent judgment about whether reasonable doubt exists, but instead consider whether it would be impossible for any reasonable juror to convict beyond a reasonable doubt. *Id.* at 329.

This Court has refined *Schlup* and has provided a two-step inquiry that a court must take in deciding cases under that standard. First, a court must decide whether the petitioner has presented new reliable evidence not presented at trial. *Goldblum*, 510 F.3d at 225. Credible evidence ranges from exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence. *Id.* But this list is not exhaustive; other types of "reliable" evidence

can also be considered. *Munchinski,* 694 F.3d at 338. The habeas court only gets to reach the question of the *Schlup* standard once that first prong has been satisfied. *Goldblum*, 510 F.3d at 225.

In *Munchinski*, this Court refined what it means for evidence to be "reliable" within the two-step inquiry. In that case, the petitioner presented a new report stating that the only witness who could provide any details supporting the prosecution's theory was in fact not even in the state at the time of the murder and that the police were aware of that fact. *Munchinski,* 694 F.3d at 336. Even though this was not a sworn affidavit, the Court found that this evidence was reliable since it contained only non-controversial facts that were recorded by the police themselves. *Id.* at 338. Since there was nothing in the record that suggested that there was any reason for misstating the facts, the Court concluded that the report was reliable. *Id.* Even if there had been some countervailing evidence, the Court acknowledged that this is only a consideration at the second prong of the inquiry once the *Schlup* standard is reached, not when determining whether an individual piece of evidence is reliable. *Id.*

Here, Lentini's affidavit matches the standard for reliable evidence. Since the lack of a sworn affidavit in *Munchinski* was considered a detriment to reliability, the fact that Lentini did give a sworn affidavit adds to his reliability. Furthermore, his extensive experience as a fire investigator demonstrates his reliability. And like how in *Munchinski* most of the facts testified to were non-controversial, most of Lentini's testimony consists of non-controversial facts about the development of fire science. While there is some conflicting evidence in the form of Trooper Jones and Mr. Aston sticking to their trial testimony, as stated in *Munchinski,* that does not factor into the reliability of the new evidence. Since Lentini's affidavit satisfies the standard set forth in

Munchinski, it must be considered new reliable evidence not presented at trial. As such, Mr. Lee has passed the first prong of *Goldblum's* two-step inquiry.

B. Lentini's Affidavit is not Mere Impeachment of the Prosecution's Witnesses

Before proceeding to the *Schlup* standard itself, there is the additional wrinkle of impeachment evidence. Mere impeachment evidence is generally not sufficient to satisfy *Schlup's* standard. *Munchinski*, 694 F.3d at 338. The Government contends that Lentini's affidavit merely consists of impeachment evidence as stated by the Pennsylvania state courts. JA 35. But Lentini's affidavit goes far beyond mere impeachment of the prosecution's witnesses.

In *Sawyer*, the Supreme Court analyzed whether a petitioner's newly presented evidence was mere impeachment. This included statements from third parties that the key witness in the case knew the codefendant before the date of the murder despite her statements to the contrary, that she was drinking the day before the murder, and that she testified under a grant of immunity from the prosecutor. *Sawyer*, 505 U.S. at 349. The Court held that since all these statements challenged the credibility of the key witness, this was mere impeachment evidence that could not support (what would eventually become) a *Schlup* claim. *Id.*

Lentini's affidavit is nothing like the impeachment evidence considered in *Sawyer*. Almost the entirety of the affidavit speaks to neutral objective facts based on advancements in fire science, which is different from the evidence attacking the witness's character in *Sawyer*. While the affidavit is framed in a way that consistently states how the prosecution witnesses gave incorrect testimony, this is not done to attack the credibility of those witnesses, which is what occurred in *Sawyer*, but rather to state what the objective truth backed up by science is. While concededly, there was a small element of credibility questioning in Lentini's affidavit, specifically when he discussed how Mr. Aston significantly overstated how many fires he had

investigated, this only comprises a small portion of the affidavit that is otherwise largely focused on the objective science of the matter. As such, Lentini's affidavit is more than mere impeachment evidence, and can support a *Schlup* claim.

C. The Prosecution's Only Valid Theory of the Case is Arson, and there is not Enough Evidence to Support an Alternative Theory of the Case

The prosecution's entire theory of the case rests on the idea that Mr. Lee conducted arson. This is important due to the Supreme Court's analysis of the *Schlup* standard in *House*. In *House*, the Court analyzed a case where DNA evidence had been central to the prosecution's case. *House*, 547 U.S. at 528-529. The petitioner was able to establish new evidence under *Schlup* that demonstrated that the DNA evidence was incorrect, which destroyed this central theory of the prosecution's case. *Id.* at 554. While there was some other circumstantial evidence that pointed towards the petitioner's guilt, the Court held that the complete and utter refutation of the prosecution's case was sufficient to meet the *Schlup* standard when all that was remaining was circumstantial evidence. *Id.* at 553-54. At the point where only circumstantial evidence remained, no reasonable juror could have convicted the petitioner beyond a reasonable doubt. *Id.*

This Court applied the standard set forth in *House* when it decided *Albrecht*. That case, similar to this one, dealt with new evidence based on advances in fire science. *Albrecht*, 485 F.3d at 124. The Court held that even if it accepted that the new fire science, there was still a substantial remainder of the prosecution's case that had not been discredited and that provided ample evidence of guilt. *Id.* at 125. Notably, there was still evidence that the petitioner had acted with a pattern of hostility and violence towards the victim, had made threats to burn down her house, had attempted to purchase gas to put in a can the day before the fire, and had an empty oil

can that tested positive for gas discovered in his truck immediately after the fire. *Id.* The Court believed this to be far more than circumstantial evidence, and instead found that this was substantial evidence pointing towards identity and motive. *Id.* Given this evidence, the Court could not conclude that it was more likely than not that no reasonable juror could convict beyond a reasonable doubt when hearing this evidence. *Id.* at 126.

The Government points to a few elements in the record that they claim have not been discredited, but even put together this additional evidence is not nearly as substantial as the evidence that the Court discussed in *Albrecht*. To dismiss the simplest claim first, the Government points to the domestic disturbance between Mr. Lee and his daughter as evidence of motive. However, one fight between a father and daughter that ended without major incident can hardly be considered evidence of motive for murder to the reasonable juror. While the theory that Mr. Lee murdered his daughter because he could not handle her mental health issues anymore may seem attractive on the surface, it is based on extremely flimsy and circumstantial evidence. In *Albrecht,* the petitioner had acted with a pattern of violence towards the victim and had threatened the specific act in question, which is nothing like this case where all that exists is evidence of a single fight, which is nothing out of the ordinary between a parent and a child. As such, this evidence standing alone could not possibly convince a reasonable juror to convict.

Next, the Government points to Mr. Lee's demeanor as evidence of murder, but again this evidence is extremely circumstantial. Trooper Jones testified that Mr. Lee joked and laughed while answering questions after the fire and had almost no reaction to his emotional wife and other daughter when they arrived to the scene. Detective Bortz also testified that Mr. Lee's attitude appeared to be that of a spectator and that he was very calm as he answered questions. The Government tries to frame Mr. Lee's lack of emotion as evidence of murder because, under

their theory, a man whose daughter was just killed in an accidental fire would not be acting so jovially. But again, this is all circumstantial. Every person handles emotions of grief and loss differently from each other. Some people wear their emotions on their sleeve, while others bottle their mourning up into their own privacy. No reasonable juror could believe that a man bottling up his emotions and cracking a joke or two demonstrates that he was a murderer.

Most importantly, the Government points to the low carbon monoxide levels in Ji Yun's blood and the strangulation marks as evidence of murder, but this evidence also falls apart under the new fire science. It is true that Dr. Mihalikis's testimony is still unquestioned. But it is important to note that the doctor assigned two possible causes of death to the low carbon monoxide levels and the low smoke deposits – either a flash fire or already being near death at the time that the fire started. FB 53. He then ruled out the possibility of a flash fire due to the position of the body. FB 53. But that determination necessarily relies on the origin point of the fire being in Mr. Lee's bedroom and not near the bathroom. And Lentini's affidavit has affirmatively discredited the methods used to determine the origin point of the fire. A different origin point means that it is entirely possible that a flash fire could have occurred in a spot consistent with the position of Ji Yun's body, and that would account for the low carbon monoxide levels and low smoke deposits. Furthermore, Dr. Mihalikis testified that the conditions on Ji Yun's neck were indicative of strangulation *or* suffocation. FB 53. This means that it is entirely possible that a flash fire caused Ji Yun to suffocate and caused those marks.

Taken all together, this evidence could not possibly have led to a reasonable juror voting to convict beyond a reasonable doubt. The evidence pointing to motive and demeanor are entirely consistent with ordinary human behavior. And since we now do not know the origin point of the fire, the evidence about the carbon monoxide levels, smoke deposits, and

strangulation could just as easily be attributed to an accidental flash fire as they could be to homicide. When there are multiple options for what occurred that would be equally plausible, it is impossible for any reasonable juror to convict beyond a reasonable doubt. As such, the Government's entire case rests on the theory of arson, and if that theory is dismantled, they have no case remaining, which means the *Schlup* standard would be passed through *House*.

D. Accepting an Accidental Fire Solves Some of the Issues that the Government Could Not Solve at Trial

A new theory of the case where the fire was accidental instead of arson better fits the facts of the case than the Government's original theory. In *Munchinski*, this Court acknowledged that presenting an alternative theory of the case that better fits the facts than the prosecution's original theory is a satisfactory way to pass the *Schlup* standard. *Munchinski*, 694 F.3d at 336. It held that if the new evidence presents a new theory that is more plausible than the original theory, no reasonable juror could convict beyond a reasonable doubt. *Id.* at 337.

And an alternative theory of this case better addresses some of the facts that could not be explained at trial. Of relevance here is that Trooper Jones could not explain why Ji Yun's body had been so extensively damaged by flames when the fire burned for such a short time and when it was insulated by sheetrock and plaster from the ceiling. FB Point 43. If we accept, as discussed above, that the fire began near Ji Yun instead of in Mr. Lee's room, that would entirely explain this discrepancy. If the fire began near Ji Yun, her body could have caught fire right away, which would have extensively damaged it within a very short time period. In addition, that would mean that the sheetrock and plaster from the ceiling would not have accumulated on her body until after it had already been scorched by the flames, and so it could not have insulated her. Not to mention that her quick death would explain the low carbon monoxide levels as explained above.

In addition, it would explain how a board was laying across her body despite no indication that it struck her while she was still alive – the board instead struck her after she was already dead.

This accidental fire theory is far more compelling than the Government's arson theory. There is no possible way for Ji Yun's body to have been so damaged by the flames to the extent that they were in such a short period of time unless her body caught fire right away. But to accept that her body caught fire right away would be to accept that the fire's origin was not in Mr. Lee's bedroom, which would then contradict the very expert testimony on which the Government is still relying. No reasonable juror could look at such a stark inconsistency between the Government's theory of the case and its own expert testimony and then conclude that theory was correct when there is a perfectly viable alternative theory. As stated in *Munchinski,* this then demonstrates that we have passed the *Schlup* standard.

E. The Government Assigns Too Much Weight to Lentini's Inability to Draw a Final Conclusion About the Cause of the Fire

While the Government is correct in stating that Lentini concludes that he is unable to render an opinion on the cause of the fire, it mischaracterizes the implications of that statement. The Government bases this position on language contained in *Albrecht.* In that case, like this one, this Court analyzed new fire science under the *Schlup* standard. *Albrecht,* 485 F.3d at 125. But because the new fire expert in that case could not make a conclusion and left open the possibility that the fire was intentional, and because there was ample other evidence of guilt, the Court held that the petitioner failed to meet the standard. *Id.* Importantly, the Court pointed out that there was other evidence besides the fire science that pointed towards the fire being intentionally set, such as the oil can in the petitioner's truck, his abuse of the victim, and his threats to burn the house down. *Id.* at 121.

By ignoring the "other element of guilt" element, the Government mischaracterizes the Court's opinion. Admittedly, this case is like *Albrecht* in that the fire expert cannot give us a final answer as to whether the fire was accidental or intentional. But where this case differs from *Albrecht* is that in *Albrecht* there was other evidence that the fire was intentional besides just fire science, and that is simply not the circumstances of the present case. There is simply no evidence in the record that the fire was intentionally set besides the discredited fire science. That makes this case distinctly different from *Albrecht* and demonstrates that its statement about the inconclusive expert does not govern this case.

Furthermore, the *Schlup* standard does not require Mr. Lee to make an absolute definitive statement that the fire was accidental. *House* is clear that "the *Schlup* standard does not require absolute certainty about the petitioner's guilt or innocence." *House*, 547 U.S. at 538. While it reiterated again that the *Schlup* standard is very high, it made clear that "more likely than not that no reasonable juror would convict beyond a reasonable doubt" is not the same as absolute certainty. *Id.* The Second Circuit clarified this idea in holding that absolute certainty could not be the standard to judge a forensic witness on because it would be an impossible standard to meet for any person who was not present at the time of death. *Rivas v. Fischer*, 687 F.3d 514, 545 (2d Cir. 2012).

In examining this standard, Lentini's final conclusion does enough to satisfy *Schlup*. The Second Circuit's language about forensic witnesses and absolute certainty makes logical sense and is also applicable to the idea of fire science, and so this Circuit should adopt that same position. Much like how a forensic expert would not be able to draw a definitive conclusion about a body that they did not investigate themselves, Lentini is not able to make a professional judgment about a fire that he himself did not investigate. While the *Schlup* standard is high, it is

not such an impossible bar. Lentini was able to make a definitive statement that there is no evidence in the record that would lead a competent fire investigator to conclude that the fire was intentionally set. And that statement is enough that no reasonable juror could believe beyond a reasonable doubt that this was arson.

F. Lentini's Affidavit Satisfies the *Schlup* Standard

Having cleared all the other issues out of the way, we can finally look to Lentini's affidavit to show that with this new evidence no reasonable juror could have convicted Mr. Lee beyond a reasonable doubt. The new fire science thoroughly and utterly demonstrates that there was no evidence of arson. Despite what the Government's experts stated, fire temperature and speeds do not indicate arson, the common phenomenon of flashover can produce all the artifacts that they claimed required accelerants, the melting of copper does not demonstrate the temperature of a fire, the depth of char does not demonstrate the length of fire, "crazed glass" does not indicate an origin point, etc.

While *Schlup* requires that the habeas court does not act as a factfinder in making an independent factual determination about what likely occurred, it does involve a weighing exercise akin to a factfinder when it determines whether any reasonable juror could convict beyond a reasonable doubt while looking at all the evidence. *House*, 547 U.S. at 538; *Munchinski,* 694 F.3d at 338. This requires us then to balance Lentini's affidavit against Trooper Jones and Mr. Aston's expert testimony, which the Government has stood by. While not discrediting the Government's experts, all reasonable jurors would believe the opinion of a world-renowned fire expert who has published extensive materials on this matter over that of a local fire marshal and a local fire protection consultant. Furthermore, all reasonable jurors would believe that new scientific advancements about the causes and origins of fire would be more

accurate than the older ideas that the Government is relying on. As such, all reasonable jurors would credit Lentini's opinion over the theory that the Government has pushed. And once that opinion is credited, there would be no evidence that this fire was arson. Without any evidence of arson, no reasonable juror could possibly convict Mr. Lee beyond a reasonable doubt. This means that Mr. Lee has met the *Schlup* standard, and he is entitled to habeas relief.

CONCLUSION

This Court should grant Mr. Han Tak Lee a new trial through habeas relief. It should first recognize that a freestanding claim of actual innocence is cognizable under the U.S. Constitution. It should then determine that Mr. Lee has met the standard set out by this Court for obtaining habeas relief under such a freestanding claim of actual innocence.

Respectfully submitted,

/s/ Jared Silberglied
Dated: December 20, 2022

Jared Silberglied
UNIVERSITY OF PENNSLYVANIA
CAREY LAW SCHOOL
2400 Chestnut St Apt 2008
Philadelphia, PA 19103
(610) 389-4733

Counsel for Appellant Han Tak Lee

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the Federal Rules of Appellate Procedure and the Court of Appeals for the Third Circuit's local rules.

/s/ Jared Silberglied

Jared Silberglied

WORD COUNT CERTIFICATION

I certify that this brief does not exceed 11,000 words as calculated using the word processing system of Microsoft Word, excluding the portions of the brief set forth in FRAP 32(f).

/s/ Jared Silberglied

Jared Silberglied

Applicant Details

First Name	**Jones**
Last Name	**Sinclair**
Citizenship Status	**U. S. Citizen**
Email Address	**jones.k.sinclair@gmail.com**
Address	**Address** Street **1820 Ferry Street, Apt. 319** City **Eugene** State/Territory **Oregon** Zip **97401** Country **United States**
Contact Phone Number	**5414148941**

Applicant Education

BA/BS From	**Southern Oregon University**
Date of BA/BS	**March 2021**
JD/LLB From	**University of Oregon School of Law** **http://www.law.uoregon.edu/**
Date of JD/LLB	**May 18, 2024**
Class Rank	**5%**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Professional Organization

Organizations **Just the Beginning**

Recommenders

Chinn, Stuart
schinn@uoregon.edu
Lininger, Tom
lininger@uoregon.edu
5413463662
Frost, Elizabeth
efrost@uoregon.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jones Sinclair

1820 Ferry Street, Apt. 319 | Eugene, OR 97401 | jones.k.sinclair@gmail.com | (541) 414-8941

May 28, 2023

The Honorable Jamar K. Walker
United States District Court, Eastern District of Virgina
Walter E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, Virgina 23510

Dear Judge Walker:

I am a rising third-year student at the University of Oregon School of Law, applying for the clerkship starting on August 5, 2024. An externship with your court would be an excellent opportunity to jumpstart my legal career and continue refining my legal writing.

My work ethic and persistence drive my success. Prior to law school, I studied political science and sociology while working part time and participating in the National Society of Collegiate Scholar's officer board. During my 1L fall semester, I struggled with adjusting to law school and a new city; however, I persevered and ended the semester in the top 10% of my class. I have continued this record of success for the last year and a half. Based on my experiences, I am confident that I have the work ethic to succeed as a judicial clerk.

I have, and will continue to build, strong legal research and writing skills. Last year, I interned for the United States Bankruptcy Court in Eugene to improve my legal research and writing. In collaboration with the District Court, I observed and practiced legal writing in a variety of practice areas. I discovered my passion for legal writing when first entering my Legal Research and Writing course. I appreciate its unique tempo, which I observed while writing memorandums and an appellate brief. I hope I can observe more legal writing and strengthen my own research and writing skills under your guidance.

My work ethic and legal writing skills will enable me to make a valuable contribution to your chambers. Thank you for your consideration, and I look forward to hearing from you.

Respectfully,

Jones Sinclair

They/Them

Jones Sinclair

1820 Ferry Street, Apt. 319 | Eugene, OR 97401 | jones.k.sinclair@gmail.com | (541) 414-8941

EDUCATION

University of Oregon School of Law, Eugene, Oregon

Juris Doctor expected May 2024; GPA: 3.80/4.00; Rank: 8/167, top 5%

Southern Oregon University, Ashland, Oregon

Bachelor of Science in Political Science, Minor in Sociology, March 2021; GPA: 3.90/4.00, *summa cum laude*.

Honors: William Cornelius Award for Outstanding Student in Pre-law for 2019 – 2020

President's List: 2017–2018, Winter & Spring 2020; Provost's List: Fall 2018, Spring 2019, Fall 2019

SOU National Society of Collegiate Scholars, *President* 2019–2021; *Star Status Coordinator* 2018–2019

EXPERIENCE

United States District Court, District of Oregon — Eugene, Oregon
Judicial Extern — Spring 2024

Legal Services of Northern California — Redding, California
Legal Extern — Fall 2023

University of Oregon — Eugene, Oregon
Litigation Lab Participant — Summer 2023

United States Bankruptcy Court, District of Oregon — Eugene, Oregon
Legal Intern, Chief Judge Thomas M. Renn — May 2022 – July 2022

- Conducted legal research and writing on bankruptcy and district court matters, including Social Security/Disability cases and Torts.
- Observed bankruptcy and district court hearings.

Southern Oregon University — Ashland, Oregon
Event Planner & Office Assistant — October 2019 – June 2021

- Developed Teaching Pathways programming based on my research.
- Managed confidential student information for review by scholarship committees.
- Coordinated with staff to plan university events through committee meetings and emails.
- Drafted compelling copy and visuals for promotional materials and outreach.

Finish Line — Medford, Oregon
Supervisor — May 2019 – September 2019

- Created new store displays while ensuring compliance with the Americans with Disabilities Act and visual merchandising standards.
- Answered questions from clients and regional management in phone and email correspondence.
- Met sales goals by training and providing feedback to sales associates.

SKILLS & INTERESTS American Sign Language ❖ HTML & CSS ❖ Graphic Design

UNIVERSITY OF OREGON

DuckWeb Information System

Name:	Jones K Sinclair	UO ID:	951595969

NAME:on | RETURN TO MENU | HELP | EXIT

Display Transcript

Info: University of Oregon - Unofficial Transcript

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- Right click and Save As
- Ctrl+P and print to PDF
- Use your browser's print or share options to save as PDF
- Free PDF printers may be available online

High School:	**North Medford High School, Jun 01, 2017**
Admit Term:	**Fall 2021 Law**
Matric Term:	**Fall 2021 Law**

Term:	Fall 2021 Law	**Level:**	Law

Subject	Course	Title	Grade	Credit Hours	Quality Points	Repeat
LAW	611	Contracts	A	4.00	16.00	
LAW	613	Torts	B	4.00	12.00	
LAW	615	Civil Procedure	A-	4.00	14.80	
LAW	622	Legal Research & Wr I	A	3.00	12.00	

	Attempted Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current:	15.00	15.00	15.00	54.80	3.65

Rank Status	Level	Rank	(Out of) Total	N-Way Tie	Top %
Ranked	1L	14	172		8

Term:	Spr 2022 Law	**Level:**	Law

Subject	Course	Title	Grade	Credit Hours	Quality Points	Repeat
LAW	617	Property	A	4.00	16.00	
LAW	618	Criminal Law	A-	4.00	14.80	
LAW	623	Legal Research & Wr II	A	3.00	12.00	
LAW	643	Constitutional Law I	A-	3.00	11.10	

	Attempted Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current:	14.00	14.00	14.00	53.90	3.85

Rank Status	Level	Rank	(Out of) Total	N-Way Tie	Top %
Ranked	1L	11	170		6

Term:	Fall 2022 Law	**Level:**	Law

Subject	Course	Title	Grade	Credit Hours	Quality Points	Repeat
LAW	610	Legal Reason & Anlysis	P*	3.00	.00	
LAW	610	Access to Justice	A	3.00	12.00	
LAW	644	Constitutional Law II	A	3.00	12.00	
LAW	648	Bankruptcy	B+	3.00	9.90	
LAW	652	Evidence	B+	3.00	9.90	

	Attempted Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current:	15.00	15.00	12.00	43.80	3.65

Rank Status	Level	Rank	(Out of) Total	N-Way Tie	Top %
Ranked	2L	17	162	3	10

Term:	Spr 2023 Law	Level:	Law

Subject	Course	Title	Grade	Credit Hours	Quality Points	Repeat
LAW	610	Advcy Top: Oral Argmnt	P*	1.00	.00	
LAW	629	Fundamentals of Loans	A	1.00	4.00	
LAW	637	Trusts & Estates I	A+	3.00	12.90	
LAW	649	Legal Profession	A	3.00	12.00	
LAW	651	Trial Practice	A	3.00	12.00	
LAW	760	Negotiation	A	3.00	12.00	

	Attempted Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current:	14.00	14.00	13.00	52.90	4.06

Rank Status	Level	Rank	(Out of) Total	N-Way Tie	Top %
Ranked	2L	8	167	3	5

Transcript Totals

	Attempted Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	58.00	58.00	54.00	205.40	3.80
Transfer:	.00	.00			
Transfer Deductions:		.00			
Overall:	58.00	58.00	54.00	205.40	3.80

RELEASE: 7.2[UO.2]

UNIVERSITY OF OREGON | School of Law

Stuart Chinn
Professor, Associate Dean for Academic Affairs
University of Oregon School of Law
1221 University of Oregon
Eugene, OR 97403-1221
schinn@uoregon.edu
541-346-5797

5/22/23

Dear Judge Walker:

I am writing in strong support of Jones Sinclair's application for a clerkship in your chambers. I have had the pleasure of having had Jones as a student in two of my classes, and they performed extremely well. In the Spring of 2022, they earned an "A-" in my Constitutional Law I class, against the backdrop of a class of about 85 students with a mean GPA for the class set at a little lower than a "B." The following semester in the Fall of 2022, they did even better than that, earning an "A" and one of the top grades in a class of about 105 students. A glance at their transcript confirms that these performances in my classes were very representative of their academic performance more broadly.

Beyond demonstrating excellence in the usual skills that are tested on a law school final exam, what stands out to me about Jones's performance in both of my classes was their ability to think broadly and creatively in response to some larger doctrinal and policy questions. They demonstrated this, in particular, in response to two essay prompts in my Constitutional Law II exam—one of which concerned an analysis of *Dobbs v. Jackson Women's Health Organization*, and the other of which concerned the role of the federal courts in advancing policy change. Their answers demonstrated able understanding of some core course themes, along with the ability to synthesize and reorient those themes in ways that diverged from my lectures and analysis.

I have every expectation that the qualities described above would translate extremely well if Jones were hired as a clerk. I have no doubt that they would be a pleasure to work with.

Faculty Offices
1515 Agate Street, 1221 University of Oregon, Eugene OR 97403-1221
541-346-3837 | FAX 541-346-1564 **www.law.uoregon.edu**

UNIVERSITY OF OREGON | School of Law

If I can provide any further information to help you consider Jones's application, please do not hesitate to contact me at schinn@uoregon.edu or at 541-346-5797.

Sincerely,

Stuart Chinn

Faculty Offices
1515 Agate Street, 1221 University of Oregon, Eugene OR 97403-1221
541-346-3837 | FAX 541-346-1564 **www.law.uoregon.edu**